

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): July 31, 2000

APPLIED POWER INC.

(Exact name of Registrant as specified in its charter)

Wisconsin (State or other jurisdiction of incorporation)	1-11288 (Commission File Number)	39-0168610 (I.R.S. Employer Identification No.)
--	--	---

6100 N. Baker Road
Milwaukee, WI 53209

Mailing address: P.O. Box 325, Milwaukee, Wisconsin 53201
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code:(414) 352-4160

Item 2. Acquisition or Disposition of Assets

On July 31, 2000, Applied Power Inc. distributed all the issued and outstanding shares of APW Ltd. to its shareholders of record as of July 21, 2000. The APW Ltd. common stock was distributed on the basis of one share of APW Ltd. common stock for every one share of Applied Power Inc. common stock held at the close of business on July 21, 2000 as more specifically described in the Information Statement sent to all shareholders. APW Ltd. owns, directly and indirectly, the electronic business of Applied Power Inc.

On July 31, 2000, Applied Power Inc. also consummated its tender offer and repurchased its subordinated notes outstanding pursuant to a tender offer. Applied Power Inc. also issued \$200 million of 13% senior subordinated notes due 2009.

In connection with the spin-off, Applied Power Inc. entered into a new credit facility. The new credit facility consists of:

- . the \$115.0 million Tranche A Term Loan, which will mature in six years,
- . the \$125.0 million Tranche B Term Loan, which will mature in eight years, and
- . a revolving credit facility of up to \$100.0 million, which will mature in six years.

In addition, Richard G. Sim, William Albrecht, Gustav Boel, Richard Carroll and Joseph Lower resigned as officers of Applied Power Inc. in order to focus more exclusively on APW Ltd. Richard G. Sim remains chairman of Applied Power Inc. and Gustav Boel, an officer of APW Ltd., also became a director of Applied Power Inc. As a result, Applied Power Inc.'s board now stands at seven directors.

Item 7. Financial Statements and Exhibits

The following financial statements reflect the electronics business as a discontinued operation and reflects the adjustments associated with the distribution of APW Ltd. to Applied Power Inc. shareholders.

Consolidated statements of earnings for the year ended August 31, 1999, 1998, and 1997 and the quarters ended May 31, 2000 and 1999 present the results as if the distribution of APW Ltd. occurred as of the first day of the financial period being presented. The statements of earnings have been prepared by adjusting the historical statements of earnings to reflect the electronics business as a

discontinued operation and include the effect of estimated costs and expenses as a result of distribution.

The consolidated balance sheet presents the consolidated financial position of Applied Power Inc. assuming the distribution had occurred. Such balance sheet has been prepared adjusting the historical balance sheet for the effect of changes in assets, liabilities and capital associated with APW Ltd.

Financial statements may not necessarily reflect the consolidated results of operations or financial position that would have existed on those dates had the distribution of APW Ltd. occurred nor are they indicative of future results.

SIGNATURE

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

APPLIED POWER INC.
(Registrant)

Date: August 14, 2000

By: /s/ Andrew G. Lampereur

Andrew G. Lampereur
Vice President Chief Financial
Officer (Duly authorized to sign on
behalf of the Registrant)

Exhibit Index

<TABLE>
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EXHIBIT	DESCRIPTION	FILED
<C>	<S>	<C>
10.1	Term Loan & Revolving Credit Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Applied Power Inc. Mortgagor, To Credit Suisse First Boston, as Collateral Agent, Mortgagee Securing Principal Indebtedness of \$430,000,000 Dated as of July 31, 2000 Relating to Premises in Milwaukee County, Wisconsin	X
10.2	Term Loan & Revolving Credit Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing by APW Tools & Supplies, Inc. Mortgagor, to Credit Suisse First Boston, as Collateral Agent, Mortgagee Securing Principal Indebtedness of \$430,000,000 Dated as of July 31, 2000 Relating to Premises in Milwaukee County, Wisconsin	X
10.3	Form of Borrowing Request	X
10.4	Subsidiary Guarantee Agreement	X
10.5	Form of Officers' Certificate of Applied Power Inc.	X
10.6	Applied Power Inc. Letter of Credit Fee Letter	X
10.7	Indemnity, Subrogation and Contribution Agreement	X
10.8	Credit Agreement dated as of July 31, 2000 among Applied Power Inc. (doing business as Actuant Corporation), The Lenders Named Herein and Credit Suisse First Boston, as Lead Arranger, Collateral Agent and Administrative Agent, First Union National Bank Syndication Agent and ING (U.S.) Capital LLC Documentation Agent	X
10.9	Term Loan & Revolving Credit Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing by APW Tools & Supplies, Inc. Mortgagor, to Credit Suisse First Boston, as Collateral Agent, Mortgagee Securing Principal Indebtedness of \$430,000,000 Dated as of July 31, 2000 Relating to Premises in Milwaukee County, Wisconsin	X

</TABLE>

<TABLE>

<C>	<S>	<C>
10.10	Term Loan & Revolving Credit Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing by Mox-Med, Inc. Mortgagor to Credit Suisse First Boston, as Collateral Agent, Mortgagee Securing Principal Indebtedness of \$430,000,000 Dated as of July 31, 2000 Relating to Premises in Columbia County, Wisconsin	X
10.11	\$200,000,000 Applied Power Inc. 13% Senior Subordinated Notes Due 2009 Registration Rights Agreement, dated August 1, 2000.	X
10.12	Applied Power Inc. as issuer and the Subsidiary Guarantors and Bank One Trust Company, N.A. Indenture, dated as of August 1, 2000.	X
10.13	Applied Power Inc. Purchase Agreement, dated July 21, 2000	X
10.14	Amendment to Purchase and Sale Agreement, dated April 30, 2000	X
10.15	Assignment and Assumption Agreement between Applied Power Inc. and APW North America, Inc.	X

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REPORT OF INDEPENDENT ACCOUNTANTS

To the Shareholders and Directors of Applied Power Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of earnings, shareholders' equity and comprehensive income, and cash flows present fairly, in all material respects, the financial position of Applied Power Inc. (the Company) at August 31, 1998 and 1999, and the results of their operations and their cash flows for each of the two years in the period ended August 31, 1999, in conformity with accounting principles generally accepted in the United States. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by

management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

PRICEWATERHOUSECOOPERS LLP
 Milwaukee, Wisconsin
 September 29, 1999, except for information
 in Note B, for which the date is July 7, 2000

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REPORT OF INDEPENDENT AUDITORS

To the Shareholders and Directors of Applied Power Inc.:

We have audited the accompanying consolidated statements of earnings, shareholders' equity and comprehensive income, and cash flows of Applied Power Inc. and subsidiaries for the year ended August 31, 1997. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such consolidated financial statements of Applied Power Inc. and subsidiaries present fairly, in all material respects, the results of their operations and their cash flows for the year ended August 31, 1997, in conformity with accounting principles generally accepted in the United States of America.

DELOITTE & TOUCHE LLP
 Milwaukee, Wisconsin
 September 25, 1997
 (November 24, 1999 as to the
 restatement for the 1998 pooling
 of interests described in Notes
 A and B)
 (July 7, 2000 as to the
 reclassification for the
 discontinued operations as
 described in Note B)

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APPLIED POWER INC.

CONSOLIDATED STATEMENTS OF EARNINGS
 (in thousands, except per share amounts)

<TABLE>
 <CAPTION>

	Years Ended August 31,			Nine Months Ended May 31,	
	1997	1998	1999	1999	2000
				(Unaudited)	(Unaudited)
<S>	<C>	<C>	<C>	<C>	<C>
Net sales.....	\$522,440	\$637,479	\$695,704	\$524,356	\$535,655
Cost of products sold....	341,906	436,594	443,020	334,104	341,816
Gross profit.....	180,534	200,885	252,684	190,252	193,839
Engineering, selling and administrative expenses.....	139,782	153,892	136,671	105,558	103,329
Amortization of intangible assets.....	4,971	12,582	8,748	6,656	5,902
Contract termination costs (recovery).....	--	--	7,824	7,824	(1,446)
Corporate reorganization expenses.....	--	--	--	--	4,449
Restructuring charges....	--	11,367	--	--	--
Merger related expenses..	--	9,276	--	--	--
Provision for loss on					

sale of subsidiary.....	--	4,500	--	--	--
Operating earnings.....	35,781	9,268	99,441	70,214	81,605
Other expense (income):					
Net financing costs.....	5,067	12,535	41,181	30,638	27,892
Gain on life insurance policy.....	--	(1,709)	--	--	--
Gain on sale of building.....	--	(9,815)	--	--	--
Other (income) expense- net.....	(2,381)	(872)	850	179	(823)
Earnings from continuing operations before income tax expense.....	33,095	9,129	57,410	39,397	54,536
Income tax expense.....	10,463	9,076	22,830	14,663	19,584
Earnings from continuing operations.....	22,632	53	34,580	24,734	34,952
Discontinued operations (Note B):					
Earnings from operations of discontinued Electronics segment (less applicable income taxes of \$20,836, \$21,622, \$24,524, \$11,604 and \$14,691, respectively).....	35,293	26,634	44,817	31,481	34,232
Earnings before extraordinary item.....	57,925	26,687	79,397	56,215	69,184
Extraordinary loss on sale of subsidiary, net of income tax benefit of \$1,700.....	--	--	--	--	(12,186)
Net earnings.....	\$ 57,925	\$ 26,687	\$ 79,397	\$ 56,215	\$ 56,998
Basic Earnings Per Share:					
Earnings from continuing operations per share...	\$ 0.60	\$ 0.00	\$ 0.89	\$ 0.64	\$ 0.89
Earnings from discontinued operations per share.....	0.93	0.70	1.15	0.81	0.88
Earnings per share before extraordinary item.....	1.53	0.70	2.04	1.45	1.77
Extraordinary loss per share.....	--	--	--	--	(0.31)
Net earnings per share..	\$ 1.53	\$ 0.70	\$ 2.04	\$ 1.45	\$ 1.46
Weighted average common shares outstanding.....	37,880	38,380	38,825	38,783	39,045
Diluted Earnings Per Share:					
Earnings from continuing operations per share...	\$ 0.57	\$ 0.00	\$ 0.86	\$ 0.62	\$ 0.87
Earnings from discontinued operations per share.....	0.90	0.66	1.12	0.78	0.85
Earnings per share before extraordinary item.....	1.47	0.66	1.98	1.40	1.72
Extraordinary loss per share.....	--	--	--	--	(0.30)
Net earnings per share..	\$ 1.47	\$ 0.66	\$ 1.98	\$ 1.40	\$ 1.42
Weighted average common and equivalent shares outstanding.....	39,307	40,174	40,200	40,204	40,302

</TABLE>

The accompanying notes are an integral part of these financial statements.

APPLIED POWER INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

<TABLE>
<CAPTION>

	August 31,		May 31,
	1998	1999	2000
			(Unaudited)
<S>	<C>	<C>	<C>
ASSETS			
Current assets			
Cash and cash equivalents.....	\$ 5,069	\$ 7,256	\$ 6,808
Accounts receivable, net.....	57,796	63,502	79,732
Inventories, net.....	85,797	100,724	93,276
Prepaid expenses.....	12,286	8,769	7,122
Deferred income taxes.....	17,558	7,564	8,599
Total current assets.....	178,506	187,815	195,537
Net property, plant and equipment.....	77,281	78,998	70,679
Goodwill, net.....	163,448	158,448	140,696
Other intangibles, net.....	30,544	30,987	28,750
Net assets of discontinued operations.....	249,696	598,458	597,489
Other assets.....	12,051	5,166	2,385
Total assets.....	\$711,526	\$1,059,872	\$1,035,536
LIABILITIES AND EQUITY			
Current liabilities			
Short-term borrowings.....	\$ 91	\$ 230	\$ --
Trade accounts payable.....	49,573	52,361	55,730
Accrued compensation and benefits.....	25,609	20,340	16,448
Other current liabilities.....	36,724	23,591	19,582
Total current liabilities.....	111,997	96,522	91,760
Long-term debt.....	225,135	521,016	456,907
Deferred income taxes.....	16,049	7,720	8,485
Other deferred liabilities.....	16,463	16,785	15,620
Shareholders' equity			
Class A common stock, \$0.20 par value per share, authorized 80,000,000 shares, issued and outstanding 38,626,068, 38,978,340 and 39,084,661 shares, respectively.....	7,725	7,796	7,822
Additional paid-in capital.....	5,817	12,388	14,255
Retained earnings.....	335,805	412,863	468,104
Accumulated other comprehensive income.....	(7,465)	(15,218)	(27,417)
Total shareholders' equity.....	341,882	417,829	462,764
Total liabilities and shareholders' equity.....	\$711,526	\$1,059,872	\$1,035,536

</TABLE>

The accompanying notes are an integral part of these financial statements.

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APPLIED POWER INC.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
AND COMPREHENSIVE INCOME
(in thousands)

<TABLE>
<CAPTION>

Class	Years Ended August 31, 1997, 1998 and 1999			
	A	Additional	Accumulated Other	Total

	Common Stock	Paid-in Capital	Retained Earnings	Comprehensive Income	Shareholders' Equity
<S>	<C>	<C>	<C>	<C>	<C>
Balance at September 1, 1996.....	\$2,893	\$ (4,890)	\$250,576	\$ 4,707	\$253,286
Net earnings for the year.....	--	--	57,925	--	57,925
Currency translation adjustments.....	--	--	--	(8,394)	(8,394)
Total comprehensive income.....					49,531
Cash dividends declared.....	--	--	(3,114)	--	(3,114)
Exercise of stock options and issuance of treasury stock....	34	5,656	(861)	--	4,829
Tax benefit of stock option exercises.....	--	1,052	--	--	1,052
Stock repurchase and other.....	--	(223)	--	--	(223)
Balance at August 31, 1997.....	2,927	1,595	304,526	(3,687)	305,361
Net earnings for the year.....	--	--	26,687	--	26,687
Currency translation adjustments.....	--	--	--	(3,744)	(3,744)
Total comprehensive income.....					22,943
Cash dividends declared.....	--	--	(2,564)	--	(2,564)
Exercise of stock options.....	72	7,686	--	--	7,758
Tax benefit of stock option exercises.....	--	929	--	--	929
Issuance of common stock in 2-for-1 stock split.....	2,778	(2,778)	--	--	--
Effect of ZERO excluded period (Note A).....	1,948	(1,615)	7,156	(34)	7,455
Balance at August 31, 1998.....	7,725	5,817	335,805	(7,465)	341,882
Net earnings for the year.....	--	--	79,397	--	79,397
Currency translation adjustments.....	--	--	--	(7,753)	(7,753)
Total comprehensive income.....					71,644
Cash dividends declared.....	--	--	(2,339)	--	(2,339)
Exercise of stock options.....	71	4,641	--	--	4,712
Tax benefit of stock option exercises.....	--	1,930	--	--	1,930
Balance at August 31, 1999.....	\$7,796	\$12,388	\$412,863	\$ (15,218)	\$417,829

</TABLE>

The accompanying notes are an integral part of these financial statements.

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APPLIED POWER INC.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
AND COMPREHENSIVE INCOME
(in thousands)

<TABLE>
<CAPTION>

Nine Months Ended May 31, 1999 (unaudited)				
Class	Additional	Retained	Accumulated	Total
Common	Paid-in	Earnings	Comprehensive	Shareholders'
Stock	Capital		Income	Equity

<S>	<C>	<C>	<C>	<C>	<C>
Balance at September 1, 1998.....	\$7,725	\$ 5,817	\$335,805	\$ (7,465)	\$341,882
Net earnings for the nine month period....	--	--	56,215	--	56,215
Currency translation adjustments.....	--	--	--	(5,712)	(5,712)
Total comprehensive income.....					50,503
Cash dividends declared.....	--	--	(1,755)	--	(1,755)
Exercise of stock options.....	63	3,308	--	--	3,371
Balance at May 31, 1999.....	\$7,788	\$ 9,125	\$390,265	\$ (13,177)	\$394,001

<CAPTION>

Nine Months Ended May 31, 2000 (unaudited)

	Class A Common Stock	Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income	Total Shareholders' Equity
<S>	<C>	<C>	<C>	<C>	<C>
Balance at September 1, 1999.....	\$7,796	\$12,388	\$412,863	\$ (15,218)	\$417,829
Net earnings for the nine month period....	--	--	56,998	--	56,998
Currency translation adjustments.....	--	--	--	(12,199)	(12,199)
Total comprehensive income.....					44,799
Cash dividends declared.....	--	--	(1,757)	--	(1,757)
Exercise of stock options.....	26	1,867	--	--	1,893
Balance at May 31, 2000.....	\$7,822	\$14,255	\$468,104	\$ (27,417)	\$462,764

</TABLE>

The accompanying notes are an integral part of these financial statements.

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APPLIED POWER INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

<TABLE>

<CAPTION>

	Years Ended August 31,			Nine Months Ended May 31,	
	1997	1998	1999	1999	2000
<S>	<C>	<C>	<C>	(Unaudited) <C>	(Unaudited) <C>
Operating activities					
Earnings from continuing operations.....	\$ 22,632	\$ 53	\$ 34,580	\$ 24,734	\$22,766
Adjustments to reconcile earnings from continuing operations to cash provided by operating activities of continuing operations:					
Depreciation and amortization.....	19,790	24,563	26,056	20,457	18,224
Gain from sale of assets.....	--	(9,899)	(323)	(124)	--
Extraordinary loss on sale of subsidiary..	--	--	--	--	13,886
Provision for					

deferred income taxes.....	(1,716)	(4,508)	1,804	--	--
Restructuring and other non-recurring items, net of income tax benefit.....	--	41,741	4,694	--	--
Changes in operating assets and liabilities, excluding the effects of business acquisitions and disposals:					
Accounts receivable..	27	(1,834)	3,371	3,926	(14,849)
Inventories.....	13,520	13,318	(17,664)	(7,740)	(4,971)
Prepaid expenses and other assets.....	(5,890)	6,478	(5,207)	2,338	2,402
Trade accounts payable.....	3,356	7,564	(2,236)	(4,627)	7,268
Other liabilities....	436	(16,160)	(14,169)	(2,280)	(7,890)
	-----	-----	-----	-----	-----
Cash provided by (used in) operating activities of continuing operations..	52,155	61,316	30,906	36,684	36,836
Cash provided by operating activities of discontinued operations.....	31,879	68,351	119,483	47,458	17,704
	-----	-----	-----	-----	-----
Total cash provided by operating activities...	84,034	129,667	150,389	84,142	54,540
Investing activities					
Proceeds on sale of property, plant and equipment.....	3,591	16,908	4,884	4,760	703
Additions to property, plant and equipment..	(15,734)	(25,214)	(22,885)	(21,262)	(9,170)
Business acquisitions, net of cash acquired.....	--	(135,727)	(7,320)	(3,500)	--
Product line dispositions and other.....	902	6,061	--	--	15,233
Net investing activities of discontinued operations.....	(93,103)	(313,999)	(435,337)	(409,078)	(42,206)
	-----	-----	-----	-----	-----
Cash used in investing activities.....	(104,344)	(451,971)	(460,658)	(429,080)	(35,440)
Financing activities					
Net principal borrowings (payments) on long-term debt....	(30,565)	102,591	403,349	(27,130)	(36,514)
(Decreases in) additions to receivables financing facility.....	(7,191)	25,399	1,634	1,950	(9,656)
Proceeds from sale/leaseback transactions.....	--	--	6,293	--	--
Dividends paid on common stock.....	(3,114)	(2,564)	(2,339)	(1,171)	(1,757)
Stock option exercises and other.....	4,863	6,855	4,552	3,332	1,893
Net financing activities of discontinued operations.....	71,767	165,348	(86,790)	377,053	11,657
	-----	-----	-----	-----	-----
Cash provided by (used in) financing activities.....	35,760	297,629	326,699	354,034	(34,377)
Effect of exchange rate changes on cash.....	(1,422)	(882)	(521)	47	(173)
	-----	-----	-----	-----	-----
Net increase (decrease) in cash and cash equivalents.....	14,028	(25,557)	15,909	9,143	(15,450)
Effect of change in cash of discontinued operations.....	(7,190)	7,769	(13,722)	1,280	15,002
Cash and cash					

equivalents--beginning of year.....	6,160	12,998	5,069	5,069	7,256
Effect of ZERO excluded period (Note A).....	--	9,859	--	--	--
	-----	-----	-----	-----	-----
Cash and cash equivalents--end of year.....	\$ 12,998	\$ 5,069	\$ 7,256	\$ 15,492	\$ 6,808
	=====	=====	=====	=====	=====

</TABLE>

The accompanying notes are an integral part of these financial statements.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Unaudited Interim Financial Statements: The accompanying Consolidated Statements of Earnings and Cash Flows for the nine months ended May 31, 1999 and May 31, 2000, the Consolidated Statement of Shareholders' Equity and Comprehensive Income for the nine months ended May 31, 2000, the Consolidated Balance Sheet as of May 31, 2000 and the related notes, have not been audited.

Note A--Summary of Significant Accounting Policies

Principles of Consolidation: The consolidated financial statements include the accounts of Applied Power Inc. and its subsidiaries, doing business as Actuant Corporation ("Applied Power," "Actuant," or the "Company"). Applied Power consolidates companies in which it owns or controls more than fifty percent of the voting shares. The results of companies acquired or disposed of during the fiscal year are included in the consolidated financial statements from the effective date of acquisition or until the date of disposal except in the case of pooling of interests (see "Basis of Presentation" below). All significant intercompany balances, transactions and profits have been eliminated in consolidation.

Basis of Presentation: The consolidated financial statements have been prepared in United States Dollars in accordance with generally accepted accounting principles in the United States. As described more fully in Note D--"Merger, Acquisitions and Divestitures," on July 31, 1998, ZERO Corporation, a Delaware corporation ("ZERO"), became a wholly-owned subsidiary of Applied Power through the merger of STB Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Applied Power ("STB"), with and into ZERO (the "Merger") pursuant to an Agreement and Plan of Merger by and among Applied Power, ZERO and STB dated as of April 6, 1998 (the "Merger Agreement"). The consolidated financial statements have been prepared following the pooling of interests method of accounting for the Merger and therefore reflect the combined financial position, operating results and cash flows of ZERO as if they had been combined for all periods presented. Prior to the Merger, ZERO had a March 31 fiscal year end. The Consolidated Balance Sheet and Statements of Earnings, Shareholders' Equity and Comprehensive Income, and Cash Flows as of and for the year ended August 31, 1998 reflect the combination of an August 31 year end consolidated financial position, results of operations and cash flows for ZERO. The Consolidated Statements of Earnings, Shareholders' Equity and Comprehensive Income, and Cash Flows for the year ended August 31, 1997 reflect the combination of the results of operations and cash flows of ZERO for the year ended March 31, 1997 and the results of operations and cash flows of Applied Power Inc. for the fiscal year ended August 31, 1997. The results of operations and cash flows for ZERO from April 1, 1997 to August 31, 1997, which have been excluded from these consolidated financial statements, are reflected as a fiscal 1998 adjustment to the Consolidated Statements of Shareholders' Equity and Comprehensive Income and Cash Flows. Net sales and net income for ZERO for the excluded period from April 1, 1997 to August 31, 1997 were \$107.2 million and \$7.9 million, respectively. The majority of the ZERO businesses are part of the Electronics segment and are part of discontinued operations as described more fully in Note B--"Discontinued Operations."

Unaudited Interim Financial Statements: The accompanying Consolidated Statements of Earnings and Cash Flows for the nine months ended May 31, 1999 and May 31, 2000, the Consolidated Statement of Shareholders' Equity and Comprehensive Income for the nine months ended May 31, 2000, the Consolidated Balance Sheet as of May 31, 2000 and the related notes, have not been audited. However, they have been prepared in conformity with the accounting principles stated in the audited consolidated financial statements for the years ended August 31, 1997, 1998, and 1999. In the opinion of management, all adjustments have been made, including normal recurring adjustments, that are necessary to present fairly the unaudited interim consolidated financial statements. The results of operations for the interim periods are not necessarily indicative of the results of operations to be expected for the full year.

Cash Equivalents: The Company considers all highly liquid investments with

original maturities of 90 days or less to be cash equivalents.

APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Inventories: Inventories are comprised of material, direct labor and manufacturing overhead, and are stated at the lower of cost or market. Inventory cost is determined using the last-in, first-out ("LIFO") method for a portion of U.S. owned inventory (approximately 63% and 62% of total inventories in 1998 and 1999, respectively). The first-in, first-out or average cost methods are used for all other inventories. If the LIFO method was not used, inventory balances would be higher than the amounts in the Consolidated Balance Sheets by approximately \$8.6 million and \$8.4 million at August 31, 1998 and 1999, respectively.

Property, Plant and Equipment: Property, plant and equipment are stated at cost. Plant and equipment are depreciated over the estimated useful lives of the assets, ranging from two to thirty years, under the straight-line method for financial reporting purposes and either the straight-line or regulatory methods for income tax purposes. Capital leases and leasehold improvements are amortized over the life of the related asset or the life of the lease, whichever is shorter. Expenditures for maintenance and repairs not expected to extend the useful life of an asset beyond its normal useful life are expensed as incurred.

Goodwill and Other Intangible Assets: Goodwill is amortized on a straight-line basis over periods of fifteen to forty years. Other intangible assets, consisting primarily of purchased patents, trademarks and noncompete agreements, are amortized over periods from two to forty years. The Company periodically evaluates the carrying value of goodwill and other intangible assets. Impairment of goodwill, if any, is measured on the basis of whether anticipated undiscounted operating cash flows generated by the underlying assets exceeds the recorded goodwill. For the year ended August 31, 1998, the Company recorded an impairment of goodwill of \$5.6 million. For further information, see Note H--"Merger, Restructuring and Other Non-recurring Items." Based on the Company's evaluation, no impairment of goodwill was realized for any other periods presented.

Revenue Recognition: Revenues and costs of products sold are recognized as the related products are shipped.

Research and Development Costs: Research and development costs are expensed as incurred. Such costs incurred in the development of new products or significant improvements to existing products totaled approximately \$9.5 million, \$11.2 million and \$7.6 million in fiscal 1997, 1998 and 1999, respectively.

Financing Costs: Net financing costs represent interest expense, financing fees, amortization of debt financing costs and accounts receivable financing costs, net of interest and investment income earned, which were insignificant for all periods presented.

Income Taxes: The Company uses the liability method to record deferred income tax assets and liabilities relating to the expected future income tax consequences of transactions that have been recognized in the consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the temporary differences between financial statement carrying amounts and income tax bases of assets and liabilities using tax rates in effect in the years in which temporary differences are expected to reverse. For further information, see Note M--"Income Taxes."

APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Earnings Per Share: The following table sets forth the computation of basic and diluted earnings per share (fiscal 1998 and 1999 results include restructuring charges and other one-time items--see Note H--"Merger, Restructuring and Other Non-recurring Items"):

<TABLE>
<CAPTION>

	Years Ended August 31,			Nine Months Ended May 31,	
	1997	1998	1999	1999	2000
				(unaudited)	(unaudited)
<S>	<C>	<C>	<C>	<C>	<C>

Numerator (in thousands):					
Earnings from continuing operations.....	\$22,632	\$ 53	\$34,580	\$24,734	\$34,952
Earnings from discontinued operations.....	35,293	26,634	44,817	31,481	34,232
Extraordinary loss on sale of subsidiary.....	--	--	--	--	(12,186)
	-----	-----	-----	-----	-----
Net earnings.....	\$57,925	\$26,687	\$79,397	\$56,215	\$56,998
	=====	=====	=====	=====	=====
Denominator (in thousands):					
Weighted average common shares outstanding for basic earnings per share.....	37,880	38,380	38,825	38,783	39,045
Net effect of dilutive stock options based on the treasury stock method using average market price.....	1,427	1,794	1,375	1,421	1,257
	-----	-----	-----	-----	-----
Weighted average common and potentially issuable shares outstanding for diluted earnings per share.....	39,307	40,174	40,200	40,204	40,302
	=====	=====	=====	=====	=====
Basic Earnings Per Share:					
Earnings from continuing operations per share.....	\$ 0.60	\$ 0.00	\$ 0.89	\$ 0.64	\$ 0.89
Earnings from discontinued operations per share.....	0.93	0.70	1.15	0.81	0.88
Extraordinary loss per share.....	--	--	--	--	(0.31)
	-----	-----	-----	-----	-----
Net earnings per share.....	\$ 1.53	\$ 0.70	\$ 2.04	\$ 1.45	\$ 1.46
	=====	=====	=====	=====	=====
Diluted Earnings Per Share:					
Earnings from continuing operations per share.....	\$ 0.57	\$ 0.00	\$ 0.86	\$ 0.62	\$ 0.87
Earnings from discontinued operations per share.....	0.90	0.66	1.12	0.78	0.85
Extraordinary loss per share.....	--	--	--	--	(0.30)
	-----	-----	-----	-----	-----
Net earnings per share.....	\$ 1.47	\$ 0.66	\$ 1.98	\$ 1.40	\$ 1.42
	=====	=====	=====	=====	=====

</TABLE>

Stock options to purchase approximately 0.4 million shares of common stock were outstanding during 1999 but were not included in the above computation of diluted earnings per share because the exercise price was greater than the average market price of the common shares. Less than 0.1 million stock options were anti-dilutive for fiscal years 1997 and 1998.

Foreign Currency Translation: A significant portion of the Company's sales, income and cash flow is derived from its international operations. The financial position and the results of operations of Actuant's foreign operations are measured using the local or regional currency of the countries in which they operate and are translated into U.S. Dollars. Revenues and expenses of foreign subsidiaries are translated into U.S. Dollars at the average exchange rate effective during the period. Although the effects of foreign currency fluctuations are mitigated by the fact that expenses of foreign subsidiaries are generally incurred in the same currencies in which the sales are generated, the reported results of operations of Actuant's foreign subsidiaries are affected by changes in foreign currency exchange rates and, as compared to prior periods, will be higher or lower depending on the weakening or strengthening of the U.S. Dollar. In addition, a portion of Actuant's net assets is

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

based in its foreign subsidiaries and translated into U.S. Dollars at the foreign currency rate in effect at the end of each period. Accordingly, Actuant's consolidated shareholders' equity will fluctuate depending upon the strengthening or weakening of the U.S. Dollar versus other currencies. Such currency translation amounts constitute the balance of accumulated other comprehensive income in the accompanying Consolidated Balance Sheets. Net gains (losses) resulting from foreign currency transactions, included in "Other (income) expense--net" in the Consolidated Statements of Earnings, amounted to \$1.0 million, \$(0.1) million and \$(0.7) million for the years ended August 31, 1997, 1998 and 1999, respectively.

Foreign Currency Hedging and Derivative Financial Instruments: Borrowings under long-term foreign currency loans are used to partially hedge against declines in the value of net investments in certain foreign subsidiaries. The Company also periodically enters into foreign currency contracts to hedge certain exposures related to selected transactions. Applied Power had no foreign currency contracts in place at August 31, 1999.

Derivative financial instruments are primarily utilized by the Company to manage risks associated with interest rate market volatility and foreign exchange exposures. The Company does not hold or issue derivative financial instruments for trading purposes. For interest rate swap agreements, the differential to be paid or received is accrued monthly as an adjustment to interest expense. The Company also utilizes foreign currency forward contracts to hedge existing foreign exchange exposures. Gains and losses resulting from these instruments are recognized in the same period as the underlying transaction. Gains relating to terminations of qualifying hedges are deferred and recognized in income at the same time as the underlying hedged transactions.

Fair Value of Financial Instruments: The fair value of the Company's cash and cash equivalents, accounts receivable, accounts payable, short-term borrowings and long-term debt approximated book value as of August 31, 1998 and 1999 due to their short-term nature and the fact that the interest rates approximated year-end market rates of interest. The fair value of debt instruments is calculated by discounting the cash flow of such obligations using the market interest rates for similar instruments.

Use of Estimates: The consolidated financial statements have been prepared in accordance with generally accepted accounting principles, which require management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses for the periods presented. They also affect the disclosure of contingencies. Actual results could differ from those estimates and assumptions.

New Accounting Pronouncements: In June 1998, Statement of Financial Accounting Standard ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities" was issued and was effective for all fiscal years beginning after June 15, 1999. SFAS No. 133 was subsequently amended by SFAS No. 137, "Accounting for Derivative Instruments and Hedging Activities--Deferral of the Effective Date of SFAS No. 133," and will now be effective for fiscal years beginning after June 15, 2000, with early adoption permitted. SFAS No. 133, as amended, requires the Company to recognize all derivatives as either assets or liabilities and measure those instruments at fair value. Upon adoption, the Company will be required to report derivative and hedging instruments at fair value in the balance sheet and recognize changes in the fair value of derivatives in net earnings or other comprehensive income, as appropriate. SFAS No. 133, as amended, will be effective for the Company's fiscal year 2001 first quarter financial statements and restatement of prior years will not be permitted. Given Applied Power's current derivative and hedging activities, the pronouncement is not expected to have a material effect on the Company's financial position or results of operations.

Reclassifications: Certain prior year amounts have been reclassified to conform to the fiscal 1999 presentation.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Note B--Discontinued Operations

On January 27, 2000, Applied Power's board of directors authorized various actions intended to enable Applied Power to distribute its Electronics segment ("APW Ltd.") to its shareholders (the "Distribution"). In the Distribution, Applied Power shareholders will receive, in the form of a special dividend, one share of APW Ltd. common stock for each Applied Power common share. As a result, APW Ltd. will become a separately traded, publicly held company. The Distribution was approved by the board of directors on July 7, 2000 and shares of APW Ltd. will be distributed to Applied Power shareholders effective July 31, 2000 to shareholders of record at July 21, 2000.

Accordingly, the consolidated financial statements and related notes have been reclassified to reflect the Company's Electronics segment as a discontinued operation. Thus, the revenues, costs and expenses, assets and liabilities, and cash flows of the Electronics segment have been excluded from the respective captions in the accompanying consolidated financial statements. The net operating results of the Electronics segment have been reported, net of applicable taxes, as "Earnings from operations of discontinued Electronics segment." The net operating results of the discontinued operations include financing costs related to the debt of the Electronics segment. The net assets of the Electronics segment have been reported in the Consolidated Balance Sheets as "Net assets of discontinued operations."

For purposes of this presentation, the amount of debt allocated to continuing and discontinued operations was determined based on preliminary estimates of the amount of debt expected to be retained by Actuant and allocated to APW Ltd. in the Distribution. The allocation of interest to continuing and discontinued operations was based on relative debt levels assigned. In conjunction with the Distribution, the majority of the Company's existing credit facilities and Notes are anticipated to be replaced with new facilities and notes. There were no general corporate expenses allocated to discontinued operations during the periods presented.

The following selected financial data for the Electronics business segment is presented for informational purposes only and does not necessarily reflect what the results of operations and financial position would have been had the segment operated as a stand-alone entity (in thousands).

<TABLE>
<CAPTION>

	Fiscal year ended August 31,			Nine months ended May 31,	
	1999	1997	1998	1999	2000
				(unaudited)	(unaudited)
<S>	<C>	<C>	<C>	<C>	<C>
Net sales.....	\$375,318	\$593,210	\$1,055,338	\$773,763	\$ 886,014
Earnings before income tax expense.....	\$ 56,129	\$ 48,256	\$ 69,341	\$ 50,317	\$ 59,105
Income tax expense.....	20,836	21,622	24,524	18,836	22,790
Extraordinary loss, net of taxes	--	--	--	--	(2,083)
Earnings from operations of discontinued Electronics segment, net of taxes.....	\$ 35,293	\$ 26,634	\$ 44,817	\$ 31,481	\$ 34,232
Current assets.....		\$188,935	\$ 222,025		\$ 257,338
Total assets.....		\$715,769	\$1,164,236		\$1,170,102
Current liabilities.....		\$182,392	\$ 231,154		\$ 237,364
Total liabilities.....		\$466,073	\$ 565,778		\$ 572,613
Net assets of discontinued operations.....		\$249,696	\$ 598,458		\$ 597,489

</TABLE>

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

In order to effect the Distribution, Applied Power and the Electronics business segment will enter into the following agreements:

- . Contribution Agreement, Plan and Agreement of Reorganization and Distribution
- . General Assignment, Assumption and Agreement regarding Litigation, Claims, and other Liabilities
- . Transitional Trademark Use and License Agreement
- . Insurance Matters Agreement
- . Bill of Sale and Assumption of Liabilities
- . Employee Benefits and Compensation Agreement
- . Tax Sharing and Indemnification Agreement
- . Interim Administrative Services Agreement
- . Confidentiality and Non Disclosure Agreement
- . Assumption of Applied Power Inc. Debt Obligation

These Agreements define the ongoing relationship between the parties after the Distribution. Applied Power and the Electronics business segment have established pricing terms for services to be effective after the Distribution

believed to be comparable to what could be achieved through arm's-length negotiations. Following the Distribution, additional or modified agreements, arrangements and transactions may be entered into and such agreements and transactions will be negotiated on an arm's-length basis.

Note C--Extraordinary Item

In May 2000, the Company recorded an extraordinary \$13.9 million charge (\$12.2 million net of \$1.7 million tax benefit) related to the loss on the sale of Air Cargo Corporation and related other assets. Applied Power Inc had acquired Air Cargo Equipment Corporation as part of the ZERO pooling of interests on July 1, 1998. It is presented as an extraordinary item due to meeting the following criteria; (i) the divestiture occurred within two years of the pooling of interest, (ii) the divestiture was not planned at that time of the pooling of interest and (iii) operations divested are material based on the relative criteria. See note D--"Merger, Acquisitions and Divestitures" for additional information.

Note D--Merger, Acquisitions and Divestitures

Nine Months Ended May 31, 2000 (unaudited)--

Acquisition--

On January 28, 2000, Applied Power, through a wholly owned subsidiary, acquired all of the outstanding stock of Metalade of Pennsylvania, Inc. ("Metalade"). Metalade specializes in metal fabrication relating to electronic enclosures. The purchase price of this acquisition totaled \$8.7 million, including fees and expenses, plus future consideration not to exceed \$5.0 million based on future achieved sales levels. The acquisition was funded by borrowings under Applied Power credit facilities. The acquisition has been accounted for using the purchase method. Metalade is included in discontinued operations in the Consolidated Statements of Earnings from the acquisition date. Preliminary allocations of the purchase price resulted in approximately \$6.7 million of goodwill.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Divestiture--

The company completed the sale of Air Cargo Corporation, a business unit in the Engineered Solutions segment, to Teleflex Incorporated on May 26, 2000. The total consideration from the transaction, which was structured as both a sale of stock of the Air Cargo Equipment Corporation and the sale of other assets, was \$12.0 million, resulting in an extraordinary loss of \$13.9 million, \$12.2 million after-tax.

On November 23, 1999, a wholly-owned subsidiary of the Company completed the sale of the assets of Samuel Groves & Co. Ltd., a business unit in the Engineered Solutions segment. Total consideration from the transaction was approximately \$3.0 million, which approximated the book value of such assets.

Fiscal 1999--

Acquisitions

On September 29, 1998, Applied Power, through its wholly-owned subsidiary, APW Enclosure Systems Limited, accepted for payment all shares of Rubicon Group plc ("Rubicon") common stock which had been tendered pursuant to the APW Enclosure Systems Limited tender offer (with a guaranteed loan note alternative) for all outstanding shares of common stock at 2.35 pounds sterling per share and all outstanding cumulative preference shares at 0.50 pounds sterling per share. The tendered common shares accepted for payment exceeded 90% of the outstanding common shares on October 8, 1998, and APW Enclosure Systems Limited invoked Section 429 of the UK Companies Act of 1985, as amended, to acquire the remaining outstanding common shares of Rubicon. APW Enclosure Systems Limited now owns all of the common shares of Rubicon. Rubicon is a leading provider of electronic manufacturing services and engineered magnetic solutions to major OEMs in the information technology and telecommunication industries. Cash paid for Rubicon totaled \$371.5 million, with the purchase price allocation resulting in \$340.6 million of goodwill. Funds for the acquisition were provided through Applied Power's credit facilities. The acquisition was accounted for using the purchase method of accounting. The operating results of Rubicon subsequent to September 29, 1998 are included in discontinued operations in the Consolidated Statements of Earnings.

In June 1999, Applied Power, through a wholly owned subsidiary, acquired all of the outstanding stock of Innovative Metal Fabrication, Inc. ("Innovative"). Innovative designs and manufactures technical environments used in electronic assembly operations, as well as electronic gaming enclosures, in Grass Valley, CA and Austin, TX. In May 1999, Applied Power also acquired certain assets of

Connector Technology, Inc. ("CTI") of Anaheim, CA. CTI manufactures custom backplanes and was integrated with Applied Power's Electronic Solutions business unit. Also, in the fourth quarter of fiscal 1999, a wholly-owned subsidiary of the Company purchased shares of Ergun Kriko San Ticaret ("Ergun"), an Akhisar, Turkey based company specializing in the manufacture of hydraulic cab-tilting systems and hydraulic bottle jacks for the Turkish truck market. The total purchase price of the combined Innovative, CTI and Ergun acquisitions totaled approximately \$17.0 million, including fees and expenses, and was funded by borrowings under Applied Power credit facilities. Allocations of the purchase price resulted in approximately \$10.9 million of goodwill. All three acquisitions have been accounted for using the purchase method. The results of operations of Ergun are included in earnings from continuing operations in the Consolidated Statements of Earnings from its acquisition date, while the results of operations of Innovative and CTI are included in discontinued operations.

Fiscal 1998--

Merger

On July 31, 1998, shareholders of Applied Power voted to approve the merger of a newly created subsidiary of Applied Power into ZERO Corporation ("ZERO"). The Merger was completed after the approval of the shareholders of Applied Power and ZERO at their respective special shareholder meetings. Under the terms of the Merger Agreement, ZERO stockholders received 0.85 of a share of Applied Power's Common

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Stock for each share of ZERO Common Stock. Applied Power issued approximately 10.6 million shares of its common stock in exchange for all outstanding common stock of ZERO Corporation and assumed outstanding stock options to purchase ZERO common stock that were converted into stock options to purchase approximately 0.6 million shares of Applied Power's common stock pursuant to the terms of the Merger. This equates to a purchase price of approximately \$386 million based on the July 30, 1998 closing stock price of Applied Power. ZERO's primary business is protecting electronics. ZERO's system packaging, thermal management and engineered cases serve the telecommunication, instrumentation and data-processing markets. ZERO also produces the ZERO Halliburton(R) line of cases for consumers worldwide and cargo containers and proprietary loading systems to the airline industry. The Merger has been accounted for using the pooling of interests method of accounting, and therefore, the consolidated financial statements reflect the consolidated financial position, operating results and cash flows of Applied Power and ZERO as if they had been consolidated for all periods presented. The majority of the ZERO businesses are included in discontinued operations in the Consolidated Statements of Earnings as described more fully in Note B--"Discontinued Operations."

All fees and expenses related to the ZERO merger and to the integration of the combined companies have been expensed as required under the pooling of interests method of accounting. Such fees and expenses amounted to \$20.1 million in 1998. This total includes transaction costs of approximately \$9.3 million related to legal, accounting and financial advisory services. The remaining \$10.8 million reflects costs associated with organizational realignment, closure of ZERO headquarters, facility consolidation and the conforming of accounting policies. Substantially all of such amounts were considered general corporate expense and therefore, included in continuing operations.

Acquisitions

On June 5, 1998, Applied Power Limited, a United Kingdom subsidiary of Applied Power, accepted for payment all of the VERO Group plc ("VERO") stock tendered, which totaled over 72% of the outstanding VERO shares, pursuant to Applied Power Limited's tender offer to acquire the entire issued share capital of VERO at a price of 192 pence per VERO share (the "Offer"). Applied Power Limited had previously acquired approximately 10% of VERO's shares, so that after accepting the shares tendered, Applied Power Limited owned or had accepted over 82% of VERO's shares. On June 19, 1998, Applied Power Limited announced that additional shares tendered brought the total of the shares it owned or had accepted for payment to over 90% of VERO's issued share capital and that it would invoke Section 429 of the U.K. Companies Act of 1985, as amended, to acquire the remaining outstanding shares of VERO stock. After the required procedures were completed, Applied Power Limited owned all of the issued share capital of VERO. Total purchase price for the transaction amounted to approximately \$191.7 million. Allocations of the purchase price resulted in approximately \$183.8 million of goodwill. VERO is a United Kingdom based company that manufactures electronic enclosures, racks, backplanes and power supplies. The acquisition has been accounted for using the purchase method of accounting. The operating results of VERO subsequent to June 5, 1998 are included in discontinued operations in the Consolidated Statements of Earnings.

On October 6, 1997, the Company, through a wholly-owned subsidiary, accepted for payment all shares of Versa Technologies, Inc. ("Versa/Tek") common stock which were tendered pursuant to the Company's tender offer to purchase all outstanding shares at a cash price of \$24.625 net per share. The balance of the outstanding shares was acquired for the same per share cash price in a follow-up merger on October 9, 1997. Cash paid for the transaction totaled approximately \$141.0 million. Allocations of the purchase price resulted in approximately \$104.5 million of goodwill. Funds for the acquisition were primarily provided through Applied Power's credit facilities. Versa/Tek, operating out of several locations in Wisconsin, is a value-added manufacturer of custom-engineered components and systems for diverse industrial markets. The acquisition has

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

been accounted for using the purchase method of accounting. The operating results of Versa/Tek subsequent to October 6, 1997 are included in earnings from continuing operations in the Consolidated Statement of Earnings.

In addition to the VERO and Versa/Tek acquisitions discussed above, in fiscal 1998 the Company acquired nine other companies, primarily in its discontinued Electronics business segment, for an aggregate purchase price of approximately \$134.4 million, including \$127.7 million in cash and the assumption of approximately \$6.7 million in debt. The cash portion of the acquisitions was funded by borrowings under Applied Power credit facilities. Each of these acquisitions was accounted for using the purchase method of accounting and the results of operations of the acquired companies are included in earnings from continuing operations in the Consolidated Statements of Earnings from their respective acquisition dates, with the Electronics segment acquisitions reported in discontinued operations. As a result of the acquisitions, the Company recorded approximately \$105.4 million of goodwill.

The following unaudited pro forma data summarize the results of operations for the periods presented as if the acquisition of Versa/Tek had been completed on September 1, 1996, the beginning of the Company's 1997 fiscal year. The pro forma data give effect to actual operating results prior to the respective acquisitions and adjustments to interest expense, goodwill amortization and income tax expense. These pro forma amounts do not purport to be indicative of the results that would have actually been obtained if the acquisition had occurred on September 1, 1996 or that may be obtained in the future. The pro forma effects of all other fiscal 1997, 1998, 1999 and nine months ended May 31, 2000 acquisitions are not included in the below data as they are included in discontinued operations in the Consolidated Statements of Earnings from the acquisition date or are not significant to the net sales, net earnings and earnings per share amounts reported in the accompanying financial statements.

<TABLE>
<CAPTION>

		Fiscal Year Ended August 31,	
		1997	1998
		(in thousands, except per share amounts)	
<S>	<C>	<C>	<C>
Net Sales.....	\$	624,299	\$ 646,809
Earnings from continuing operations.....	\$	20,629	\$ 130
Basic Earnings Per Share from continuing operations.....	\$	0.55	\$ 0.00
Shares Used in Computation.....		37,880	38,380
Diluted Earnings Per Share from continuing operations.....	\$	0.53	\$ 0.00
Shares Used in Computation.....		39,307	40,174

</TABLE>

Divestiture

On March 31, 1998, the Company completed the sale of the assets of Moxness Industrial Products, a division of Versa/Tek. Total consideration from the transaction was \$6.0 million, which approximated book value of the assets.

Fiscal 1997--

Acquisitions

On September 26, 1996, the Company acquired the net assets of Everest Electronic Equipment, Inc. ("Everest") for cash consideration of \$52.0 million, which was funded through borrowings under then existing Applied Power credit facilities. Approximately \$43.0 million of the purchase price was assigned to goodwill. Everest is a manufacturer of custom and standard electronic

enclosures used by the computer, telecommunication, datacom and other industries and is headquartered in Anaheim, California. The acquisition has been accounted for using the purchase method of accounting. The results of Everest subsequent to the acquisition date are included in the Electronics segment and are therefore included in discontinued operations in the Consolidated Statements of Earnings.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

In addition to the acquisition of Everest discussed above, in fiscal 1997 the Company acquired three other companies for an aggregate of approximately \$22.8 million in cash plus \$5.8 million in subsequent earn-out payments. The cash portion of the purchase price was funded by borrowings under then existing Applied Power credit facilities. Each of these acquisitions was accounted for as a purchase and the results of operations of the acquired companies, all in the Electronics segment, are included in discontinued operations in the Consolidated Statements of Earnings from their respective acquisition dates. As a result of the acquisitions, the Company recorded approximately \$17.0 million in goodwill.

Note E--Accounts Receivable Financing

On November 20, 1997, the Company replaced its former \$50.0 million accounts receivable financing facility with a new facility that provided up to \$80.0 million of multi-currency accounts receivable financing. This new agreement expires in November 2000. On August 28, 1998, the Company amended the facility by increasing the amount of multi-currency accounts receivable financing to \$90.0 million. On December 18, 1998, the facility was increased to \$150.0 million of multi-currency accounts receivable financing. All other substantive terms of the amended agreements remained the same.

Applied Power and certain subsidiaries (collectively, "Originators") sell trade accounts receivable to Applied Power Credit Corporation ("APCC"), a wholly owned limited purpose subsidiary of Applied Power. APCC is a separate corporate entity that sells participating interests in its pool of accounts receivable to financial institutions ("Purchasers"). The Purchasers, in turn, receive an ownership and security interest in the pool of receivables. Participation interests in new receivables generated by the Originators are purchased by APCC and resold to the Purchasers as collections reduce previously sold participation interests. APCC has the risk of credit loss on such receivables up to a maximum recourse amount of 16% of sold receivables. Applied Power retains collection and administrative responsibilities on the participation interests sold as servicer for APCC and the Purchasers.

At August 31, 1998, August 31, 1999 and May 31, 2000, accounts receivable were reduced by \$51.3 million, \$52.9 million and \$43.8 million, respectively, representing receivable interests sold under this program. Sales of trade receivables are reflected as a reduction of accounts receivable in the accompanying Consolidated Balance Sheets and the proceeds received, which are used to reduce debt, are included in cash flows from financing activities in the accompanying Consolidated Statements of Cash Flows.

Accounts receivable financing costs totaling \$1.8 million, \$2.6 million and \$3.2 million for the years ended August 31, 1997, 1998 and 1999, respectively, are included in net financing costs in the accompanying Consolidated Statements of Earnings.

Immediately after the Distribution, the Company does not anticipate continuing the accounts receivable financing program.

Note F--Net Inventories

The nature of the Company's products is such that they generally have a very short production cycle. Consequently, the amount of work-in-process at any point in time is minimal. In addition, many parts or components are ultimately either sold individually or assembled with other parts making a distinction between raw materials and finished goods impractical to determine. Several other locations maintain and manage their inventories using a job cost system where the distinction of categories of inventory by state of completion is also not available.

As a result of these factors, it is neither practical nor cost effective to segregate the amounts of raw materials, work-in-process or finished goods inventories at the respective balance sheet dates, as segregation would only be possible as the result of physical inventories which are taken at dates different from the balance sheet dates.

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APPLIED POWER INC.

Note G--Shareholders' Equity

The authorized capital stock of the Company as of August 31, 1999 consists of 80,000,000 shares of Class A Common Stock, \$0.20 par value, of which 38,978,340 shares were issued and outstanding; 7,500,000 shares of Class B Common Stock, \$0.20 par value, none of which were issued and outstanding; and 800,000 shares of Cumulative Preferred Stock, \$1.00 par value ("Preferred Stock"), none of which have been issued. Holders of both classes of the Company's Common Stock are entitled to such dividends as the Company's board of directors may declare out of funds legally available, subject to any contractual restrictions on the payment of dividends or other distributions on the Common Stock. If the Company were to issue any of its Preferred Stock, no dividends could be paid or set apart for payment on shares of Common Stock, unless paid in Common Stock, until dividends on all of the issued and outstanding shares of Preferred Stock had been paid or set apart for payment and provision had been made for any mandatory sinking fund payments. In the event of dissolution or liquidation of the Company, the holders of both classes of Common Stock are entitled to share ratably all assets of the Company remaining after payment of the Company's liabilities and satisfaction of the rights of any series of Preferred Stock, which may be outstanding. There are no redemption or sinking fund provisions with respect to the Common Stock.

On January 8, 1998, the board of directors authorized a two-for-one stock split effected in the form of a 100 percent stock dividend to shareholders of record on January 22, 1998. To effect the stock split, a total of 13,891,578 shares of the Company's Class A Common Stock was issued on February 3, 1998. All references in the consolidated financial statements to the average number of common shares and related per share amounts have been restated to reflect the stock split.

At the Annual Meeting of Shareholders on January 9, 1998, the shareholders voted to increase the number of authorized shares of Class A Common Stock from 40,000,000 to 80,000,000.

Note H--Merger, Restructuring and Other Non-recurring Items

Nine Months Ended May 31, 2000 (unaudited)--

In fiscal 2000, Applied Power recorded \$4.4 million of fees and expenses associated with the Distribution transaction and incorporating APW Ltd. Such legal, accounting, tax and investment banking fees and expenses are reported under the caption "Corporate Reorganization Expenses" in the Consolidated Statement of Earnings for the nine months ended May 31, 2000.

In the first quarter of fiscal 2000, Applied Power recovered certain costs associated with the cancellation of a contract within its Industrial business segment for which a loss was recorded in a prior period. See fiscal 1999 below. The gain of \$1.4 million represents a reduction in the estimated loss originally recorded in fiscal 1999.

Fiscal 1999--

In the first quarter of fiscal 1999, the Company incurred a \$7.8 million non-recurring charge due to the cancellation of a contract within the Industrial business segment. The majority of these costs were incurred prior to fiscal 1999.

Fiscal 1998--

In the fourth quarter of fiscal 1998, the Company recorded merger, restructuring and other one-time charges of \$50.4 million, \$37.2 million net of tax, or \$0.93 per diluted share. The charge included \$30.3 million relating to action programs to eliminate less productive products and product lines, consolidate Gardner

Bender and Enerpac headquarters and combine certain facilities. Also included were costs relating primarily to the write-off of obsolete inventory to net realizable value, employee severance, facility closures, operating lease obligations, and, in two cases, the write-down of goodwill. The Company completed its planned restructuring programs during fiscal 1999.

In connection with the Merger with ZERO consummated in fiscal 1998 (Note D--"Merger, Acquisitions and Divestitures"), the Company recorded transaction costs related to legal, accounting and financial advisory services which were expensed as required under the pooling of interests method of accounting. In addition, the Company incurred costs associated with organizational realignment, closure of ZERO headquarters, a change in estimate of a receivable

valuation and the write-off of obsolete inventory due to conforming of product lines. Together these totaled approximately \$20.1 million and were part of the \$50.4 million charge discussed above.

The following table summarizes the manner in which merger, restructuring and other non-recurring items were recorded in the 1998 Consolidated Statement of Earnings (in thousands):

<TABLE>	
<S>	
	<C>
Cost of products sold.....	\$15,660
Engineering, selling and administrative expenses.....	9,019
Amortization of intangible assets.....	5,062
Restructuring charges.....	11,367
Merger related expenses.....	9,276

Subtotal.....	50,384
Less: Income tax benefit.....	13,143

Total.....	\$37,241
	=====
</TABLE>	

Additionally, fiscal 1998 results included a pretax \$4.5 million asset impairment charge recorded to reduce the carrying amount of a European subsidiary in the Industrial segment to estimated realizable value. This charge is reported in the "Provision for loss on sale of subsidiary" caption in the Consolidated Statement of Earnings. The assets of this European subsidiary were sold in the first quarter of fiscal 2000. See Note D--"Mergers, Acquisitions and Divestitures" for further discussion regarding the sale.

Note I--Debt

The Company's indebtedness was as follows (in thousands):

<TABLE>	
<CAPTION>	
	August 31,

	1998 1999 May 31,

	(unaudited)
<S>	<C> <C> <C>
Borrowings under:	
Multi-currency revolving credit agreement.....	\$360,672 \$407,287 \$423,914
Senior subordinated notes, due 2009.....	-- 200,000 200,000
Commercial paper.....	42,930 108,691 78,862
Senior promissory notes, due March 8, 2011.....	50,000 50,000 --
Floating rate unsecured loan notes, due 2003...	27,386 30,681 25,927
Pound Sterling multi-currency revolving credit agreement.....	26,218 5,623 5,592
Other.....	5,351 6,156 10,034

Total long-term debt.....	512,557 808,438 744,329
Less: Amounts attributable to discontinued operations.....	287,422 287,422 287,422

Long-term debt attributable to continuing operations.....	\$225,135 \$521,016 \$456,907
	===== ===== =====
</TABLE>	

On April 1, 1999, the Company issued \$200.0 million of 8.75% Senior Subordinated Notes due 2009 (the "1999 Notes"). Net proceeds from the 1999 Notes offering approximated \$194.6 million after deducting

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

underwriting discounts and other offering expenses. Proceeds from the 1999 Notes were used to repay a portion of the borrowings outstanding under New Facility discussed below, thereby restoring the Company's borrowing capacity under that agreement. Interest on the 1999 Notes is payable semi-annually, and the Company has the option to redeem all or a portion of the 1999 Notes at certain specified redemption prices on or after April 1, 2004. The 1999 Notes are subordinate in right of payment to the prior payment in full of all senior debt as defined in the indenture.

To provide the necessary funds for the acquisition of Rubicon Group plc ("Rubicon") by the Company's Electronics segment, the Company and Enerpac B.V., a Netherlands subsidiary of the Company, as Borrowers, entered into a Multi-currency Credit Agreement, dated as of October 14, 1998, providing for an

\$850.0 million, five-year revolving credit facility (the "New Facility"). In conjunction with the closing of the New Facility, the Company terminated its prior \$700.0 million, five-year revolving credit facility (the "Facility") and used certain funds received under the New Facility to repay borrowings under the Facility.

At August 31, 1999, direct outstanding borrowings under the New Facility were \$407.3 million and commercial paper borrowings and the floating rate unsecured loan notes, considered a utilization of the New Facility, were \$108.7 million and \$30.7 million, respectively. At August 31, 1999, the Company had borrowings under the New Facility of \$235.0 million, \$13.7 million and \$158.6 million denominated in the U.S. Dollar, the Japanese Yen and the Euro, respectively. Under the New Facility, the Company can borrow at a floating rate of LIBOR plus 0.275% to 1.375% annually, depending on the Company's debt-to-EBITDA ratio. Currently, the Company incurs interest at 1% above 30-day LIBOR, determined by the underlying currency of the debt, which the Company is borrowing. A non-use fee, currently computed at a rate of 0.275% annually, is payable quarterly on the average unused credit line. The unused credit line of the New Facility at August 31, 1999 was approximately \$303.3 million.

The New Facility contains customary restrictions concerning investments, liens on assets, sales of assets, maximum levels of debt and minimum levels of shareholders' equity. In addition, the agreement requires the Company to maintain certain financial ratios. As of August 31, 1999, the Company was in compliance with all debt covenants.

Commercial paper outstanding at August 31, 1999 totaled \$108.7 million, net of discount, and carried an average interest rate of 5.4%. The Company has the ability and intent to maintain these commercial paper obligations, classified as long term, for more than one year. Amounts outstanding as commercial paper reduce the amount available for borrowings under the New Facility.

The \$50.0 million senior promissory notes due March 8, 2011 bear interest at 7.13%, and are payable in 11 annual installments of \$4.5 million beginning March 8, 2001. The proceeds from the notes were used solely for the repurchase of ZERO's common stock in a Dutch Auction Tender Offer in fiscal 1996 and for payment of related expenses. In January 2000, the Company paid off the \$50.0 million senior promissory notes in anticipation of the Distribution. In connection with this early retirement of debt, the Company paid a \$3.3 million make-whole premium, \$2.1 million net of the tax benefits. This premium has been included in discontinued operations in the Consolidated Statement of Earnings for the nine-month period ended May 31, 2000.

The floating rate unsecured loan notes were entered into by the Company as a result of its acquisitions of VERO and Rubicon. The notes were exchanged with individual shareholders of VERO and Rubicon, at their option, in lieu of receiving cash payment for their tendered shares. The notes carry an interest rate of LIBOR minus 0.50% and can be redeemed at the option of the note holder on various dates through 2003.

The Pound Sterling multi-currency revolving credit agreement was entered into by the Company's VERO subsidiary in April 1998, prior to the acquisition of VERO by the Company. The facility provides up to 27.5 million Pounds Sterling of multi-currency borrowings and expires in 2003. Any borrowings under this

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

agreement carry an interest rate of LIBOR plus 0.65%, determined by the underlying currency of the debt, which the Company is borrowing. At August 31, 1999, the facility had outstanding borrowings denominated in Pounds Sterling, German Marks, French Francs, U.S. Dollars, Danish Krone and Italian Lira. The agreement has certain covenants regarding tangible net worth and debt-to-net worth, neither of which was deemed restrictive at August 31, 1999. The total unused line of credit available under this agreement at August 31, 1999 was approximately \$38.4 million.

"Other" long-term debt primarily consists of various foreign lines-of-credit.

Debt allocated to discontinued operations was determined based on the amount of debt expected to be assumed by APW Ltd. in the Distribution. Prior to the Distribution, most debt instruments were held centrally, and as such, debt from these specific instruments was not historically allocated. The allocation of interest to continuing and discontinued operations was based on the Company's average interest rate costs and relative debt levels assigned. In conjunction with the Distribution, the majority of the Company's existing credit facilities and the 1999 Notes are anticipated to be replaced with new facilities and notes.

Short-term Debt: Certain of the Company's foreign subsidiaries had other

short-term borrowings under unsecured non-committed lines of credit with banks at August 31, 1998 and 1999. Interest rates vary depending on the currency being borrowed. The weighted-average interest rates on the short-term borrowings were 5.24% and 5.45% at August 31, 1998 and 1999, respectively.

Derivative Financial Instruments: As part of its interest rate management program, the Company periodically enters into interest rate swap agreements with respect to portions of its outstanding debt. The purpose of these swaps is to protect the Company from the effect of an increase in interest rates. The interest rate swap agreements in place at August 31, 1999 effectively converted \$436.8 million of the Company's variable rate debt to a weighted-average fixed rate of 5.03%. The swap agreements expire on varying dates through 2006. During the nine-month period ended May 31, 2000, the Company recorded a gain related to the unwinding of interest rate swap agreements, which totaled \$6.5 million, in conjunction with final debt payments. The interest rate swap agreements were unwound in anticipation of the spin-off of the Electronics segment and the corresponding gain was included in discontinued operations in the Consolidated Statement of Earnings for the nine-month period ended May 31, 2000.

The purpose of the Company's foreign currency hedging activities is to protect the Company from the risk that the eventual U.S. Dollar cash flows resulting from the sale and purchase of products in foreign currencies will be adversely affected by changes in exchange rates. In addition, the Company seeks to manage the impact of foreign currency fluctuations related to the repayment of intercompany borrowings and, to a lesser degree, the impact of foreign currency fluctuations on the net assets of foreign subsidiaries. Fluctuations in the value of hedging instruments are offset by fluctuations in the value of the underlying exposures being hedged. The Company uses from time to time forward exchange contracts to hedge certain firm purchase and sales commitments and the related receivables and payables including other third party or intercompany foreign currency transactions. Cross-currency swaps are used to hedge foreign currency denominated payments related to intercompany loan agreements. Hedged transactions are denominated primarily in European currencies. The net realized and unrealized gains or losses on forward contracts deferred at August 31, 1999 were negligible. The Company also uses borrowings under long-term foreign currency loans to partially hedge against declines in the value of net investments in certain foreign subsidiaries.

The counterparties to these financial instruments consist of major financial institutions with investment grade or better credit ratings. The Company does not expect any losses from nonperformance by these counterparties.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Fair Values of Financial Instruments: The fair value of the Notes is estimated based on quoted market prices. At August 31, 1999, the fair value of the Notes was estimated to be approximately \$189.0 million. At August 31, 1999, the fair value of the Senior Promissory Notes was \$50.7 million based on current market interest rates of similar debt instruments.

The accompanying Consolidated Balance Sheets do not reflect a value for the interest rate swap agreements. If the Company were to terminate its interest rate swap agreements, the Company would have received \$3.5 million at August 31, 1999, and would have had to pay \$4.2 million at August 31, 1998. The Company had no foreign currency contracts in place at August 31, 1999.

Adoption of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," in fiscal 2001 will require the Company to record all derivative instruments at their fair values. See Note A--"Summary of Significant Accounting Policies--New Accounting Pronouncements."

Aggregate Maturities: Long-term debt outstanding at August 31, 1999 is payable as follows: none in fiscal 2000; \$11.8 million in fiscal 2001; none in fiscal 2002; \$24.3 million in fiscal 2003; \$522.3 million in fiscal 2004 and \$250.0 million thereafter. These principal payments are expected to change after the Distribution as the majority of the existing debt agreements and facilities will be replaced concurrent with the Distribution.

The Company paid \$15.5 million, \$24.8 million and \$61.5 million for financing costs in fiscal 1997, 1998 and 1999, respectively, which included both continuing and discontinued operations.

Note J--Leases

The Company leases certain facilities, computers, equipment and vehicles under various lease agreements generally over periods of one to twenty years. Under most arrangements, the Company pays the property taxes, insurance, maintenance and expenses related to the leased property. Many of the leases include provisions that enable the Company to renew the lease based upon fair value rental rates on the date of expiration of the initial lease.

Future obligations under non-cancelable operating leases for both continuing and discontinued business units in effect at August 31, 1999 are: \$28.9 million in fiscal 2000; \$25.1 million in fiscal 2001; \$29.9 million in fiscal 2002; \$20.2 million in fiscal 2003; \$16.3 million in fiscal 2004 and \$131.9 million thereafter. It is expected that upon Distribution, the Electronics segment leases will be assigned to APW Ltd. Future obligations related to the continuing businesses in effect at August 31, 1999 are: \$11.0 million in fiscal 2000; \$9.5 million in fiscal 2001; \$8.7 million in fiscal 2002; \$7.6 million in fiscal 2003; \$6.7 million in fiscal 2004 and \$17.5 million thereafter.

Total rental expense under operating leases related to the continuing businesses was \$11.1 million, \$11.0 million and \$11.5 million in fiscal 1997, 1998 and 1999, respectively.

Note K--Stock Option Plans

At August 31, 1999, a total of 8,715,638 shares of Class A Common Stock were authorized for issuance under the Company's employee and director stock option plans (including the assumed ZERO stock options described below), of which a total of 3,633,879 have been issued through exercises of option grants. At August 31, 1999, 5,081,759 shares were reserved for issuance under the plans, consisting of 2,548,290 shares subject to outstanding options and 2,533,469 shares available for further grants.

Employee Plans: On January 8, 1997, shareholders of the Company approved the adoption of the Applied Power Inc. 1996 Stock Plan (the "1996 Plan"). Previously, the Company had three nonqualified stock option plans for employees--the 1985, 1987 and 1990 plans. No further options may be granted under the 1985, 1987 or 1990 plans, although options previously issued and outstanding under these plans remain exercisable pursuant to the provisions of the plans. Under the terms of the 1996 Plan, stock options may be granted to

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

officers and key employees. Options generally have a maximum term of ten years and an exercise price equal to 100% of the fair market value of a share of the Company's common stock at the date of grant. Options generally vest 50% after two years and 100% after five years.

In connection with the Merger (see Note D--"Merger, Acquisitions and Divestitures"), all of the options outstanding under the former ZERO stock option plans were assumed by the Company and converted into options to purchase shares of the Company's Class A Common Stock on terms adjusted to reflect the merger exchange ratio. Options to acquire a total of 735,767 ZERO shares were converted into options to acquire a total of 625,402 Company shares. These options, as so adjusted, retain all of the rights, terms and conditions of the respective plans under which they were originally granted.

ZERO's plans provided for the granting of options to purchase shares of ZERO common stock to directors, officers and other key employees at a price not less than the fair market value on the date of grant. Options were granted for terms of five to eight years and become exercisable in annual installments (generally one-third of the total grant) commencing one year from the date of grant, on a cumulative basis.

A summary of stock option activity under the employee plans is as follows:

<TABLE>

<CAPTION>

	Number of Shares	Weighted Average Exercise Price
<S>	<C>	<C>
Outstanding at August 31, 1996.....	3,198,520	\$11.37
Granted.....	642,865	19.61
Exercised.....	(502,379)	11.16
Cancelled.....	(87,396)	14.51

Outstanding at August 31, 1997.....	3,251,610	12.91
Effect of ZERO excluded period (Note A).....	(84,797)	--
Granted.....	467,644	32.27
Exercised.....	(721,160)	13.01
Cancelled.....	(133,591)	18.85

Outstanding at August 31, 1998.....	2,779,706	15.72
Granted.....	646,230	27.45
Exercised.....	(539,138)	14.82
Cancelled.....	(401,508)	26.57

Outstanding at August 31, 1999.....	2,485,290	17.27

Exercisable at August 31, 1999..... 1,499,045 11.74
=====

</TABLE>

The following table summarizes information concerning currently outstanding and exercisable options:

<TABLE>
<CAPTION>

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	August 31, 1999 Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	August 31, 1999 Number Exercisable	Weighted Average Exercise Price
<S>	<C>	<C>	<C>	<C>	<C>
\$ 6.75-\$ 8.38	550,288	2.5	\$ 8.04	550,288	\$ 8.04
\$ 8.56-\$10.69	534,932	2.5	9.75	534,932	9.75
\$11.13-\$17.75	529,309	6.1	15.93	283,659	15.85
\$18.09-\$27.72	569,215	8.1	26.31	90,211	23.29
\$31.63-\$37.66	301,546	7.9	32.78	39,955	34.27
	-----			-----	
\$ 6.75-\$37.66	2,485,290	5.2	17.27	1,499,045	11.74
	=====			=====	

</TABLE>

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

The Company applies Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its employee stock option plans. Accordingly, no compensation expense has been recognized for its stock-based compensation plans other than for the outside director plan discussed below. If the Company had accounted for these stock options issued to employees in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation," the Company's earnings from continuing operations and related earnings per share would have been changed to the pro forma amounts indicated below in thousands, except per share amounts:

<TABLE>
<CAPTION>

	Fiscal year ended August 31,		
	1997	1998	1999
<S>	<C>	<C>	<C>
Earnings from continuing operations -- as reported.....	\$22,632	\$ 53	\$34,580
Earnings (loss) from continuing operations -- pro forma.....	\$21,653	\$(1,042)	\$33,164
Basic Earnings from continuing operations per share -- as reported.....	\$ 0.60	\$ 0.00	\$ 0.89
Basic Earnings (loss) from continuing operations per share -- pro forma.....	\$ 0.57	\$(0.03)	\$ 0.85
Diluted Earnings from continuing operations per share -- as reported.....	\$ 0.57	\$ 0.00	\$ 0.86
Diluted Earnings (loss) from continuing operations per share -- pro forma.....	\$ 0.55	\$(0.03)	\$ 0.82

</TABLE>

The pro forma effects of applying SFAS No. 123 have not been allocated to discontinued operations and may not be representative of the effects on reported net income and earnings per share for future years since options vest over several years and additional awards are made each year.

The fair value of Applied Power stock options used to compute pro forma net earnings and pro forma earnings per share disclosures is the estimated present value at grant date using the Black-Scholes option-pricing model. The weighted average fair values per share of options granted in fiscal 1997, 1998 and 1999 are \$4.90, \$11.54 and \$10.37, respectively. The following weighted-average assumptions were used in completing the model:

<TABLE>
<CAPTION>

Fiscal year ended August 31,		
1997	1998	1999

	<C>	<C>	<C>
<S>			
Dividend yield.....	0.33%	0.24%	0.20%
Expected volatility.....	19.00%	23.50%	31.90%
Risk-free rate of return.....	6.30%	5.50%	6.40%
Expected life.....	5.0 years	5.6 years	4.7 years

It is anticipated that APW Ltd. will adopt its own stock option plan and the existing outstanding stock options under the Applied Power stock option plan will be converted into options to purchase an equivalent value of APW Ltd. common shares based on the fair market value of APW Ltd. common shares at the time of the Distribution. Options totaling 1,704,350, 1,657,673 and 1,966,394 shares were held by Electronics segment employees as of August 31, 1997, 1998 and 1999, respectively. At August 31, 1999, 1,224,988 of these options were exercisable.

Outside Director Plan: Annually, each outside director is granted stock options to purchase 3,000 shares of common stock at a price equal to the market price of the underlying stock on the date of grant. The number of shares granted was increased in 1997, from 2,000 shares, by an amendment to the plan adopted on October 31, 1996. As required by SFAS No. 123, these options resulted in compensation expense in the accompanying Consolidated Statement of Earnings. Total compensation expense related to Director stock options was not material in each of the periods presented. Options for a maximum of 120,000 shares may be issued under this plan. Director stock options completely vest 11 months after date of grant.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

A summary of option activity under the Director's stock option plan is as follows:

<TABLE>
<CAPTION>

	Number of Shares	Weighted Average Exercise Price
<S>	<C>	<C>
Outstanding at August 31, 1996.....	50,000	\$10.77
Granted.....	15,000	19.44
Cancelled.....	(4,000)	8.42
Outstanding at August 31, 1997.....	61,000	13.03
Granted.....	15,000	34.50
Exercised.....	(14,000)	10.09
Outstanding at August 31, 1998.....	62,000	18.88
Granted.....	15,000	37.06
Exercised.....	(14,000)	10.09
Outstanding at August 31, 1999.....	63,000	25.17
Exercisable at August 31, 1999.....	48,000	21.45

</TABLE>

Note L -- Employee Benefit Plans

Defined Benefit Pension and Other Postretirement Benefit Plans

The Company provides defined benefit pension and other postretirement benefits to certain employees of businesses acquired by Applied Power who were entitled to those benefits prior to acquisition. The following tables provide a reconciliation of benefit obligations, plan assets, funded status and net periodic benefit cost for those plans (in thousands):

<TABLE>
<CAPTION>

	Versa/Tek Pension Plan		Other Postretirement Benefits	
	Fiscal year ended August 31,			
	1998	1999	1998	1999
<S>	<C>	<C>	<C>	<C>
Reconciliation of benefit obligations				
Benefit obligation at beginning of				

year.....	\$ --	\$11,416	\$ 4,661	\$ 5,224
Service cost.....	409	81	18	19
Interest cost.....	786	787	363	354
Amendments.....	(1,890)	--	--	--
Curtailment gain.....	(554)	--	(34)	--
Acquisition of business.....	11,605	--	230	--
Actuarial (gain)/loss.....	1,523	(213)	324	639
Benefits paid.....	(463)	(974)	(338)	(364)
	-----	-----	-----	-----
Benefit obligation at end of year.....	\$11,416	\$11,097	\$ 5,224	\$ 5,872
	=====	=====	=====	=====
Reconciliation of plan assets				
Fair value of plan assets at beginning of year.....	\$ --	\$12,086	\$ --	\$ --
Actual return on plan assets.....	38	1,006	--	--
Acquisition of business.....	12,099	--	--	--
Company contributions.....	342	129	--	--
Employee contributions.....	--	--	--	--
Benefits paid from plan assets.....	(393)	(897)	--	--
	-----	-----	-----	-----
Fair value of plan assets at end of year.....	\$12,086	\$12,324	\$ --	\$ --
	=====	=====	=====	=====
Funded (Unfunded) status of the plans..	\$ 670	\$ 1,227	\$(5,224)	\$(5,872)
Unrecognized net loss/(gain).....	567	411	(4,445)	(2,828)
	-----	-----	-----	-----
Prepaid (accrued) benefit cost.....	\$ 1,237	\$ 1,638	\$(9,669)	\$(8,700)
	=====	=====	=====	=====
Weighted-average assumptions as of August 31				
Discount rate.....	7.00%	7.75%	7.00%	7.75%
Expected return on plan assets.....	8.50%	8.50%		
Rate of compensation increase.....	5.00%	Frozen		

</TABLE>

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

<TABLE>
<CAPTION>

	Versa/Tek Pension Benefits					
	-----			Other		
	Fiscal year ended August 31,			Postretirement Benefits		
	1997	1998	1999	1997	1998	1999
	-----	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Components of net periodic benefit cost						
Service cost.....	\$ --	\$ 409	\$ 81	\$ 5	\$ 18	\$ 19
Employee contributions.....	--	--	--	--	--	--
Interest cost.....	--	786	787	353	363	354
Expected return on assets.....	--	(972)	(1,064)	--	--	--
Amortization of actuarial (gain)/loss.....	--	--	1	(305)	(331)	(294)
	-----	-----	-----	-----	-----	-----
Benefit cost (credit).....	\$ --	\$ 223	\$ (195)	\$ 53	\$ 50	\$ 79
	=====	=====	=====	=====	=====	=====

</TABLE>

At August 31, 1999, the Versa/Tek pension benefits consisted of three plans covering certain legacy Versa/Tek employees and executives. On March 31, 1999, the Versa/Tek Hourly Plan was merged into the Versa/Tek Salaried Plan, resulting in no change to the aggregate funding status of the two plans. In fiscal 1998, the Company amended the plans to freeze the accumulation of benefits. This change resulted in a decrease of approximately \$1.9 million in the projected benefit obligation of Versa/Tek. In March 1998, a \$0.6 million curtailment gain was realized associated with the sale of the Moxness operation. The Company makes actuarially determined contributions to a trust fund of the funded plans, which represents the maximum allowable for deduction in determination of Federal taxable income. Trust assets consist primarily of participating units in common stock and bond funds. The Company assumed the prepaid benefit cost via acquisition of Versa/Tek in October 1997.

Certain former employees of acquired businesses who retired before February 1, 1994 (and their dependents) have the option of being covered by one of several medical plans. Deferred vested employees who terminated employment before February 1, 1994 are also eligible for this postretirement benefit. In addition, retiree life insurance is available to all employees hired before 1988. The postretirement benefit liability related to these plans is unfunded.

Most individuals receiving postretirement health care and life insurance benefits under the above programs are required to make monthly contributions to defray a portion of the cost. Retiree contributions are adjusted annually. Retirees currently do not contribute toward the cost of life insurance. The accounting for retiree health care benefits assumes retirees will continue to contribute toward the cost of such benefits.

The health care cost trend rate used in the actuarial calculations was 9.4%, trending downward to 6.5% by the year 2009, and remaining level thereafter. A one percentage-point increase or decrease in the assumed health care cost trend rate would increase or decrease the postretirement benefit obligation by approximately \$0.4 million and would not have a material effect on aggregate service and interest cost components.

Defined Contribution Benefit Plans

Effective January 1, 1998, the Company merged its former Employee Savings Plan with the Applied Power Inc. Employee Stock Ownership Plan to create a single retirement program for eligible U.S. employees -- the APW 401(k) Plan (the "401(k) Plan"). Substantially all of the Company's full-time U.S. employees are eligible to participate in the 401(k) Plan. Under the provisions of the 401(k) Plan, the plan administrator acquires shares of Class A Common Stock on the open market and allocates such shares to accounts set aside for Company employees' retirements. Company core contributions generally equal 3% of each employee's annual cash compensation, subject to IRS limitations. Additionally, employees generally may contribute up to 15% of their base compensation. The Company also matches approximately 25% of each employee's contribution up to the participant's first 6% earnings.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

In addition to the APW 401(k) Plan, the Company maintains the ZERO Corporation Retirement Savings Plan which covers substantially all full-time U.S. employees at former ZERO Corporation business units who have completed one full year of service. Under the provisions of this plan, the Company makes core contributions to employees' retirement accounts based upon percentages of eligible employees' compensation, eligible employees may contribute a percentage of their pre-tax compensation, subject to certain limitations, and the Company matches a portion of the employee contributions up to 5% of the participant's compensation for the period.

During the years ended August 31, 1997, 1998 and 1999, company contributions to defined contribution benefit plans relating to continuing operations were approximately \$3.0 million, \$2.6 million and \$3.3 million, respectively.

Non-U.S. Benefit Plans--The Company contributes to a number of retirement programs for employees outside the U.S. Pension expense under these programs amounted to approximately \$1.3 million, \$1.4 million and \$1.1 million in fiscal 1997, 1998 and 1999, respectively. As these plans are not significant, Applied Power does not determine the actuarial value of accumulated plan benefits or net assets available for benefits.

Note M--Income Taxes

Income tax expense of continuing operations consists of the following (in thousands):

<TABLE>
<CAPTION>

	Fiscal year ended August 31,		
	1997	1998	1999
<S>	<C>	<C>	<C>
Currently payable:			
Federal.....	\$ 6,446	\$ 3,347	\$12,096
Foreign.....	5,068	8,436	6,348
State.....	665	1,801	2,583
Subtotals.....	12,179	13,584	21,027
Deferred:			
Federal.....	(1,585)	(3,672)	607
Foreign.....	87	(951)	1,823
State.....	(218)	115	(627)
Subtotals.....	(1,716)	(4,508)	1,803
Totals:.....	\$10,463	\$ 9,076	\$22,830

</TABLE>

Income tax expense differs from the amounts computed by applying the Federal income tax rate to earnings before income tax expense. A reconciliation of income taxes at the U.S. statutory rate to the effective tax rate for continuing operations follows:

<TABLE>
<CAPTION>

	Fiscal year ended August 31,		
% of Pre-tax Earnings	1997	1998	1999
<S>	<C>	<C>	<C>
Federal statutory rate.....	35.0%	35.0%	35.0%
State income taxes, net of Federal effect.....	0.9	13.6	2.2
Non-deductible amortization and other expenses.....	2.1	33.0	2.9
Net effects of foreign tax rates and credits.....	(5.7)	29.7	(1.5)
Other items.....	(0.7)	(11.9)	1.2
Effective tax rate.....	31.6%	99.4%	39.8%

</TABLE>

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Temporary differences and carryforwards that gave rise to the deferred tax assets and liabilities for continuing operations included the following items (in thousands):

<TABLE>
<CAPTION>

	August 31,	
	1998	1999
<S>	<C>	<C>
Deferred income tax assets:		
Operating loss and state tax credit carry forwards.....	\$ 5,074	\$ 5,674
Compensation and other employee benefits.....	5,092	5,436
Inventory items.....	13,341	4,889
Restructuring expenses.....	663	4,528
Deferred income.....	295	--
Book reserves and other items.....	3,140	2,627
Total deferred income tax assets.....	27,605	23,154
Valuation allowance.....	(5,074)	(5,674)
Net deferred income tax assets.....	22,531	17,480
Deferred income tax liabilities:		
Depreciation and amortization.....	13,696	11,526
Inventory items.....	2,900	2,678
Other items.....	4,426	3,432
Deferred income tax liabilities.....	21,022	17,636
Net deferred income tax.....	\$ 1,509	\$ (156)

</TABLE>

The valuation allowance represents a reserve for foreign and domestic operating loss and state tax credit carryforwards for which utilization is uncertain. The increase in the valuation allowance represents the current year increase in such loss carryforwards. The majority of the foreign losses may be carried forward indefinitely. The state loss carryforwards expire in various years through 2014.

Income taxes paid during fiscal 1997, 1998 and 1999 were \$32.4 million, \$49.7 million and \$37.2 million, respectively, which pertained to both continuing and discontinued operations.

The Company's policy is to remit earnings from foreign subsidiaries only to the extent any resultant foreign income taxes are creditable in the U.S. Accordingly, the Company does not currently provide for the additional U.S. and foreign income taxes which would become payable upon remission of undistributed earnings of foreign subsidiaries. Undistributed earnings from continuing operations on which additional income taxes have not been provided amounted to approximately \$87.0 million at August 31, 1999. If all such undistributed earnings were remitted, an additional provision for income taxes of

approximately \$5.1 million would have been necessary as of August 31, 1999.

Earnings from continuing operations before income taxes from non-U.S. operations were \$8.6 million, \$7.5 million and \$24.1 million for 1997, 1998 and 1999, respectively.

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

Note N--Supplemental Balance Sheet Information

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<CAPTION>

	August 31,	
	1998	1999
	(in thousands)	
<S>	<C>	<C>
Accounts receivable		
Accounts receivable.....	\$ 58,709	\$ 67,572
Less allowances.....	4,259	4,070
Accounts receivable, net.....	\$ 54,450	\$ 63,502
Property, plant and equipment		
Property.....	\$ 3,184	\$ 1,826
Plant.....	27,091	48,916
Machinery and equipment.....	157,614	140,977
Total.....	187,889	191,719
Less accumulated depreciation.....	110,608	112,721
Property, plant and equipment, net.....	\$ 77,281	\$ 78,998
Goodwill		
Goodwill.....	\$192,966	\$190,840
Less accumulated amortization.....	29,518	32,392
Goodwill, net.....	\$163,448	\$158,448
Other Intangibles		
Other intangibles.....	\$ 44,342	\$ 49,036
Less accumulated amortization.....	13,798	18,049
Other intangibles, net.....	\$ 30,544	\$ 30,987

</TABLE>

Note O--Business Segment, Geographic and Customer Information

The Company had been reporting two business segments. The Electronics segment is now included, in its entirety, in discontinued operations. Subsequent to the Distribution, the Company will be split into two reportable segments with separate and distinct operating management and strategies. Tools & Supplies is primarily involved in the design, manufacture and distribution of tools and supplies to the construction, electrical wholesale, retail do-it-yourself, retail automotive, industrial and production automation markets. Engineered Solutions focuses on developing and marketing value-added, customized solutions for original equipment manufacturers in the recreational vehicle, automotive, truck, medical, aerospace, defense and industrial markets.

The following table summarizes financial information by reportable segment. The information for Earnings before Income Tax Expense includes the effects of the merger, restructuring and other non-recurring items discussed in Note H--"Merger, Restructuring and Other Non-recurring Items." Fiscal 2000 results include \$4.4 million in fees and expenses associated with the spin-off and incorporating the Electronics business segment offshore with the entire amount being allocated to general corporate and other. Engineered Solutions results in fiscal 1999 include a \$7.8 million pre-tax charge related to a contract termination, with a related recovery of \$1.4 million recorded on this contract termination during the nine month period ended May 31, 2000. The \$50.4 million restructuring and merger charge from fiscal 1998 was allocated by segment as follows: \$24.6 million to Tools & Supplies, \$10.0 million in Engineered Solutions and \$15.8 million in general corporate and other. The \$4.5 million asset impairment charge from fiscal 1998 was reported in the Engineered Solutions

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APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

segment. Earnings before Income Tax Expense for each reportable segment and geographic region does not include general corporate expenses, interest expense or currency exchange adjustments.

<TABLE>
<CAPTION>

	Years Ended August 31,			Nine Months Ended May 31,	
	1997	1998	1999	1999	2000
(in thousands)				(Unaudited)	(Unaudited)
<S>	<C>	<C>	<C>	<C>	<C>
Net Sales:					
Tools & Supplies.....	\$292,492	\$305,706	\$309,276	\$234,587	\$230,166
Engineered Solutions..	229,948	331,773	386,428	289,769	305,489
Totals.....	\$522,440	\$637,479	\$695,704	\$524,356	\$535,655
Earnings (Loss) from Continuing Operations before Income Tax Expense:					
Tools & Supplies.....	\$ 22,346	\$ (377)	\$ 31,210	\$ 38,274	\$ 41,248
Engineered Solutions..	18,236	28,282	35,547	41,009	55,412
General corporate and other.....	(7,487)	(18,776)	(9,347)	(39,886)	(42,124)
Totals.....	\$ 33,095	\$ 9,129	\$ 57,410	\$ 39,397	\$ 54,536
Depreciation and Amortization:					
Tools & Supplies.....	\$ 9,473	\$ 11,590	\$ 9,718	\$ 7,573	\$ 7,511
Engineered Solutions..	9,311	12,773	15,954	12,740	10,098
General corporate and other.....	1,006	200	384	144	615
Totals.....	\$ 19,790	\$ 24,563	\$ 26,056	\$ 20,457	\$ 18,224
Capital Expenditures:					
Tools & Supplies.....	\$ 8,078	\$ 6,992	\$ 9,127	\$ 6,355	\$ 4,525
Engineered Solutions..	6,133	11,976	9,890	7,921	4,078
General corporate and other.....	1,523	6,246	3,868	6,986	567
Totals.....	\$ 15,734	\$ 25,214	\$ 22,885	\$ 21,262	\$ 9,170

</TABLE>

<TABLE>
<CAPTION>

	August 31,		May 31,
	1998	1999	2000
<S>	<C>	<C>	(Unaudited) <C>
Assets:			
Tools & Supplies.....	\$182,183	\$ 194,236	\$ 194,964
Engineered Solutions.....	261,826	247,414	228,759
Net assets of discontinued operations.....	249,696	598,458	597,489
General corporate and other.....	17,821	19,764	14,324
Totals.....	\$711,526	\$1,059,872	\$1,035,536

</TABLE>

The following table summarizes financial information by geographic region. The information for Operating Earnings includes the effects of the merger, restructuring and other non-recurring items discussed in Note H--"Merger, Restructuring and Other Non-recurring Items." Fiscal 2000 results include \$4.4 million in fees and expenses associated with the spin-off and incorporating the Electronics business segment offshore with the entire amount being allocated to General corporate and other. North America results in fiscal 1999 include a \$7.8 million pre-tax charge related to a contract termination, with a related recovery of \$1.4 million recorded on this contract termination during the nine-month period ended May 31, 2000. Fiscal 1998 results include a \$50.4 million restructuring and merger charge that was allocated by geographic region as follows: \$21.6 million in North America, \$6.9 million in Europe, \$4.3 million in Japan and Asia Pacific, \$1.8 million in Latin America and \$15.8 million in General corporate and other. The \$4.5 million asset impairment charge from fiscal 1998 was reported in the Europe region.

APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

<TABLE>
<CAPTION>

(in thousands)	Years Ended August 31,			Nine Months Ended May 31,	
	1997	1998	1999	1999	2000
<S>	<C>	<C>	<C>	(Unaudited) <C>	(Unaudited) <C>
Net sales:					
North America.....	\$318,943	\$434,357	\$ 468,023	\$349,515	\$ 364,265
Europe.....	146,123	159,534	190,473	146,992	141,164
Japan and Asia					
Pacific.....	46,795	31,331	27,003	20,133	22,524
Latin America.....	10,579	12,257	10,205	7,716	7,702
Totals.....	\$522,440	\$637,479	\$ 695,704	\$524,356	\$ 535,655
Earnings (Loss) from Continuing Operations before Income Tax Expense:					
North America.....	\$ 35,244	\$ 20,397	\$ 41,029	\$ 51,525	\$ 70,608
Europe.....	11,269	11,132	24,053	24,028	22,636
Japan and Asia					
Pacific.....	(4,017)	(1,941)	(203)	3,357	2,936
Latin America.....	(1,914)	(1,683)	1,878	373	480
General corporate and other.....	(7,487)	(18,776)	(9,347)	(39,886)	(42,124)
Totals.....	\$ 33,095	\$ 9,129	\$ 57,410	\$ 39,397	\$ 54,536

<CAPTION>

<S>	August 31,			<C>	May 31,
	<C>	<C>	<C>		2000
<S>	<C>	<C>	<C>	<C>	(Unaudited) <C>
Assets:					
North America.....		\$339,683	\$ 321,461		\$ 302,665
Europe.....		75,587	95,019		93,006
Japan and Asia					
Pacific.....		21,401	18,404		20,941
Latin America.....		7,338	6,766		7,111
Net assets of discontinued operations.....		249,696	598,458		597,489
General corporate and other.....		17,821	19,764		14,324
Totals.....		\$711,526	\$1,059,872		\$1,035,536

</TABLE>

Corporate assets, which are not allocated, represent principally cash and deferred income taxes.

No single customer accounted for more than 10% of total net sales in 1997, 1998 or 1999. Export sales from domestic operations were less than 3% of total net sales in each of the periods presented.

Note P--Contingencies and Litigation

The Company had outstanding letters of credit totaling \$6.6 million and \$1.9 million at August 31, 1998 and 1999, respectively. The letters of credit generally serve as collateral for liabilities included in the Consolidated Balance Sheet.

The Company is a party to various legal proceedings that have arisen in the normal course of its business. These legal proceedings typically include product liability, environmental, labor, patent claims and commission disputes. The Company has recorded reserves for loss contingencies based on the specific circumstances of each case. Such reserves are recorded when it is probable that a loss has been incurred as of the balance sheet date and such loss can be reasonably estimated. In the opinion of management, the resolution of these contingencies will not have a material adverse effect on the Company's

APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

The Company has facilities in numerous geographic locations that are subject to a range of environmental laws and regulations. Environmental costs are expensed or capitalized depending on their future economic benefits. Expenditures that have no future economic value are expensed. Liabilities are recorded when environmental remediation is probable and the costs can be reasonably estimated. Environmental expenditures over the last three years have not been material. Although the level of future expenditures for environmental remediation is impossible to determine with any degree of certainty, it is management's opinion that such costs will not have a material adverse effect on the Company's financial position, results of operations or cash flows. Environmental remediation accruals related to the continuing businesses of \$1.9 million and \$1.3 million were included in the Consolidated Balance Sheets at August 31, 1998 and 1999, respectively.

Note Q--Subsequent Events

On June 30, 2000, Applied Power Inc. completed the sale of all outstanding capital stock of Barry Wright Corporation, a wholly owned subsidiary of Applied Power Inc. Barry Wright Corporation, comprised of the Barry Controls Aerospace and Barry Controls Defense and Industrial divisions, and its UK subsidiary Barry Controls Ltd., were sold to Hutchinson S.A., a subsidiary of the TotalFinaElf Group, a French based multi-national corporation. The net of tax cash proceeds were approximately \$157.5 million.

On July 7, 2000, Applied Power Inc.'s Board of Directors approved the distribution of its Electronics business. Shareholders of Applied Power Inc. common stock will receive one share of APW Ltd. common stock for every Applied Power Inc. share owned on the July 21, 2000 record date. APW Ltd. will trade separately on the New York Stock Exchange (NYSE) as "APW" and Applied Power Inc. will continue to trade on the NYSE, but will change its ticker symbol to "ATU" and will subsequently change its name to Actuant Corporation during fiscal year 2001.

Note R--Quarterly Financial Data (Unaudited)
(in millions, except per share amounts)

<TABLE>
<CAPTION>

	Fiscal 1998			
	First(1)	Second	Third(2)	Fourth(3)
<S>	<C>	<C>	<C>	<C>
Net sales.....	\$150.8	\$153.9	\$164.7	\$168.1
Gross profit.....	51.0	52.0	58.1	39.8
Earnings from continuing operations....	9.9	8.2	14.2	(32.3)
Earnings from discontinued operations...	9.1	8.3	8.2	1.0
Net earnings.....	\$ 19.1	\$ 16.5	\$ 22.4	\$(31.3)
Earnings from continuing operations per share				
Basic.....	\$ 0.26	\$ 0.21	\$ 0.37	\$(0.84)
Diluted.....	\$ 0.25	\$ 0.20	\$ 0.35	\$(0.80)
Earnings from discontinued operations per share				
Basic.....	\$ 0.23	\$ 0.22	\$ 0.21	\$ 0.04
Diluted.....	\$ 0.23	\$ 0.21	\$ 0.20	\$ 0.02
Net earnings per share				
Basic.....	\$ 0.49	\$ 0.43	\$ 0.58	\$(0.80)
Diluted.....	\$ 0.48	\$ 0.41	\$ 0.55	\$(0.78)

</TABLE>

APPLIED POWER INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS--(Continued)

<TABLE>
<CAPTION>

	Fiscal 1999			
	First(4)	Second	Third	Fourth
<S>	<C>	<C>	<C>	<C>
Net sales.....	\$172.5	\$171.9	\$180.0	\$171.3

Gross profit.....	61.6	62.5	66.2	62.4
Earnings from continuing operations.....	3.4	11.0	10.1	10.1
Earnings from discontinued operations.....	13.0	8.3	10.4	13.1
	-----	-----	-----	-----
Net earnings.....	\$ 16.4	\$ 19.3	\$ 20.5	\$ 23.2
	=====	=====	=====	=====
Earnings from continuing operations per share				
Basic.....	\$ 0.09	\$ 0.28	\$ 0.26	\$ 0.26
Diluted.....	\$ 0.08	\$ 0.27	\$ 0.25	\$ 0.26
Earnings from discontinued operations per share				
Basic.....	\$ 0.33	\$ 0.22	\$ 0.27	\$ 0.33
Diluted.....	\$ 0.33	\$ 0.21	\$ 0.26	\$ 0.32
Net earnings per share				
Basic.....	\$ 0.42	\$ 0.50	\$ 0.53	\$ 0.59
Diluted.....	\$ 0.41	\$ 0.48	\$ 0.51	\$ 0.58

</TABLE>

<TABLE>

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	Fiscal 2000		
	First(5)	Second(6)	Third(7)
	-----	-----	-----
<S>	<C>	<C>	<C>
Net sales.....	\$173.0	\$184.1	\$178.5
Gross profit.....	62.1	65.7	66.0
Earnings from continuing operations.....	12.4	8.3	11.6
Earnings from discontinued operations.....	11.3	12.2	13.4
Extraordinary loss on sale of subsidiary, net of tax.....	--	--	(12.2)
	-----	-----	-----
Net earnings.....	\$ 23.7	\$ 20.5	\$ 12.8
	=====	=====	=====
Earnings from continuing operations per share			
Basic.....	\$ 0.32	\$ 0.21	\$ 0.30
Diluted.....	\$ 0.31	\$ 0.21	\$ 0.29
Earnings from discontinued operations per share			
Basic.....	\$ 0.29	\$ 0.31	\$ 0.34
Diluted.....	\$ 0.28	\$ 0.30	\$ 0.33
Extraordinary loss per share			
Basic.....	\$ --	\$ --	\$(0.31)
Diluted.....	\$ --	\$ --	\$(0.30)
Net earnings per share			
Basic.....	\$ 0.61	\$ 0.52	\$ 0.33
Diluted.....	\$ 0.59	\$ 0.51	\$ 0.32

</TABLE>

- - - - -

- (1) Includes a \$1.7 million gain, with no tax impact, on life insurance proceeds, or \$0.04 per diluted share.
- (2) Includes a \$2.9 million net gain, after tax on the sale of a facility and the write-down of a European subsidiary to its estimated realizable value, or a net impact of \$0.08 per diluted share.
- (3) Earnings from continuing operations includes restructuring and other one-time charges of \$50.4 million (\$37.2 million, after tax), or \$0.93 per diluted share. An additional \$19.1 million (\$12.3 million after tax) was included within discontinued operations related to similar restructuring costs associated with the Electronics segment.
- (4) Includes a \$7.8 million (\$4.7 million after tax) loss as a result of a contract termination, or \$0.12 per diluted share.
- (5) Includes a \$1.4 million (\$0.9 million after tax) recovery of costs related to the contract termination recorded in the first quarter of fiscal 1999.
- (6) Includes a charge of \$3.5 million (\$2.2 million, net of tax benefit) for fees and expenses associated with the Distribution and the incorporation of APW Ltd.
- (7) Includes a charge of \$1.0 million (\$0.6 million, net of tax benefit) for fees and expenses associated with the Distribution and the incorporation of APW Ltd.

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TERM LOAN AND REVOLVING CREDIT LEASEHOLD
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING

TERM LOAN AND REVOLVING CREDIT LEASEHOLD MORTGAGE, ASSIGNMENT OF
LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), dated

as of July 31, 2000, made by Applied Power Inc.], a Wisconsin corporation having
an office at 6101 North Baker Road, Glendale, WI, as mortgagor, assignor and
debtor (in such capacities and together with any successors in such capacities,
the "Mortgagor"), in favor of CREDIT SUISSE FIRST BOSTON, a bank organized under

the laws of Switzerland, acting through its New York branch ("CSFB"), having an
office at Eleven Madison Avenue, New York, New York 10010, in its capacity as
collateral agent for the lending institutions (the "Lenders") from time to time

party to the Credit Agreement (as hereinafter defined), as mortgagee, assignee
and secured party (CSFB, in such capacities and together with any successors in
such capacities, the "Mortgagee").

R E C I T A L S :

A. Pursuant to that certain credit agreement, dated as of July 31,
2000 (as amended, amended and restated, supplemented or otherwise modified from
time to time, the "Credit Agreement"), among Applied Power Inc. (doing business

as Actuant Corporation), a Wisconsin corporation (the "Borrower"), the Lenders,

CSFB, as swingline lender, an issuing bank, administrative agent and Collateral
Agent, First Union National Bank, as syndication agent and ING (U.S.) Capital
LLC, as documentation agent, the Lenders have agreed to make to or for the
account of the Borrower certain Loans (as hereinafter defined) and to issue
certain Letters of Credit (as hereinafter defined) for the account of the
Borrower.

B. It is contemplated that the Borrower and one or more of the
Subsidiary Guarantors may enter into one or more agreements (collectively, the
"Interest Rate Protection Agreements") with one or more of the Lenders or their

respective Affiliates (as hereinafter defined) fixing the interest rates with
respect to the Loans under the Credit Agreement.

C. Mortgagor is the owner and holder of the tenant's interest under
that certain lease, dated as of April 29, 1991 (as amended from time to time in
accordance with the provisions of this Mortgage, the "Mortgaged Lease"), between

Bernard Garland and Sheldon Garland d/b/a Garland Enterprises, as landlord
(together with its successors and assigns, "Lessor") and Mortgagor, as tenant,

which affects the property described on Schedule A annexed hereto. A memorandum
of lease relating to the Mortgaged Lease was recorded on May 2, 1991 at Book
2562, Page 718, in the real property records of Milwaukee County.

D. It is a condition to the obligations of the Lenders to make the
Loans under the Credit Agreement and a condition to any Lender issuing Letters
of Credit under the Credit Agreement or entering into any Interest Rate
Protection Agreement that the Mortgagor execute and deliver the applicable Loan
Documents (as hereinafter defined), including this Mortgage.

E. This Mortgage is given by the Mortgagor in favor of the Mortgagee for its benefit and the benefit of the Lenders (collectively, the "Secured Parties") to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

A G R E E M E N T:
- - - - -

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby covenants and agrees with the Mortgagee as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. The following terms used in this Mortgage shall have the following meanings:

"ACM" shall have the meaning assigned to such term in Section 4.8(ii) hereof.

"Affiliates" shall have the meaning assigned to such term in the Credit Agreement.

"Allocated Indebtedness" shall have the meaning assigned to such term in Section 14.20(i) hereof.

"Allocation Notice" shall have the meaning assigned to such term in Section 14.20(i) hereof.

"Alteration" shall mean any and all additions, modifications or changes, structural or nonstructural.

"Architect's Certificate" shall have the meaning assigned to such term in Section 10.4(ii) hereof.

"Borrower" shall have the meaning assigned to such term in Recital A hereof.

"Business Day" shall have the meaning assigned to such term in the Credit Agreement.

"Charges" shall mean any and all real estate, property and other taxes, assessments and special assessments, levies, fees, all water and sewer rents and charges and all other governmental charges imposed upon or assessed against, and all claims (including, without limitation, claims for labor, materials and supplies and other claims arising by operation of law) against, all or any portions of the Mortgaged Property.

"Collateral" shall have the meaning assigned to such term in Section 14.20(i) hereof.

"Collateral Account" shall have the meaning assigned to such term in the Security Agreement.

"Commitments" shall have the meaning assigned to such term in the Credit Agreement.

"Contested Liens" shall mean, collectively, any Liens incurred in

respect of any Charges to the extent that the amounts owing in respect thereof are not yet delinquent or are being contested and otherwise comply with the provisions of Section 9.1 hereof; provided, however, that such Liens shall in

all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by this Mortgage, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien must be superior to the Lien and security interest created and evidenced hereby.

"Contracts" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all contracts and other general intangibles relating to the Mortgaged Property and all reserves, deferred payments, deposits, refunds and claims of every kind, nature or character relating thereto.

"Cost of Construction" shall mean the sum, so far as it relates to the

reconstructing, renewing, restoring or replacing of the Improvements, of (i) obligations incurred or assumed by the Mortgagor or undertaken by tenants pursuant to the terms of the Subleases for labor, materials and other expenses and to contractors, builders and materialmen, (ii) the cost of contract bonds and of insurance of every kind, nature or character that would be deemed by a Prudent Operator to be necessary or appropriate during the course of construction, (iii) the expenses incurred or assumed by the Mortgagor for test borings, surveys, estimates, any Plans and Specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary for proper construction, (iv) ad valorem property taxes levied upon the Premises during performance of any Restoration and (v) any costs or other charges in connection with obtaining title insurance and counsel opinions that may be required or necessary in connection with a Restoration.

"Credit Agreement" shall have the meaning assigned to such term in

Recital A hereof.

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"Default Rate" shall mean the rate per annum equal to the highest rate

then payable under the Credit Agreement.

"Destruction" shall mean any and all damage to, or loss or destruction

of, the Premises or any part thereof.

"Environmental Law" shall have the meaning assigned to such term in

the Credit Agreement.

"Estimate" shall have the meaning assigned to such term in Section

10.4(ii)(D) hereof.

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"Event of Default" shall have the meaning assigned to such term in the

Credit Agreement.

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"Fixture" shall mean all machinery, apparatus, equipment, fittings,

fixtures, improvements and articles of personal property of every kind, description and nature whatsoever now or hereafter attached or affixed to the Land or any other Improvement or used in connection with the use and enjoyment of the Land or any other Improvement or the maintenance or preservation thereof, which by the nature of their location thereon or attachment thereto are fixtures under the UCC or any other applicable law including, without limitation, all utility systems, fire sprinkler and security systems, drainage facilities, lighting facilities, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, pipes, fittings and other items of every kind and description now or hereafter attached to or located on the Land which by the nature of their location thereon or attachment thereto are real property under applicable law, HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, water or lighting systems, power, sanitation, waste removal, elevators, maintenance or other systems or equipment.

"Full Replacement Cost" shall mean the Cost of Construction to replace

the Improvements, exclusive of depreciation, excavation, foundation and footings, as determined from time to time (but not less frequently than would be

determined by a Prudent Operator or as otherwise requested by the Mortgagee) by a Person selected by the Mortgagor and reasonably acceptable to the Mortgagee.

"GAAP" shall have the meaning assigned to such term in the Credit

Agreement.

"Governmental Authority" shall mean any Federal, state, local, foreign

or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board, bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court, tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Mortgagor or the Mortgaged Property or any portion thereof.

"Hazardous Materials" shall have the meaning assigned to such term in

the Credit Agreement.

"Improvements" shall mean all buildings, structures and other

improvements of every kind or description and any and all Alterations now or hereafter located, attached or erected on the Land including, without limitation (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements immediately upon delivery thereof on the Land and to be part of the improvements immediately upon their incorporation therein.

"Indemnified Liabilities" shall have the meaning assigned to such term

in Section 14.6(i) hereof.

"Indemnitees" shall have the meaning assigned to such term in Section

14.6(i) hereof.

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"Insurance Certificate" shall mean a certificate evidencing the

Insurance Requirements (i) in substantially the form commonly known as "ACORD 27" that (A) provides that the insurance has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the Insurance Policies, (B) provides an unequivocal obligation to give notice in advance to additional interest parties of termination and notification in advance of changes and (C) purports to convey all the privileges of the Insurance Policies to the certificate holders and (ii) that otherwise complies with the requirements with respect thereto set forth in Article VIII hereof.

"Insurance Policies" means the insurance policies and coverages

required to be maintained by the Mortgagor with respect to the Mortgaged Property pursuant to Article VIII hereof and all renewals and extensions thereof.

"Insurance Requirements" means, collectively, all provisions of the

Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon the Mortgagor and applicable to the Mortgaged Property or any use or condition thereof.

"Interest Rate Protection Agreements" shall have the meaning assigned

to such term in Recital B hereof.

"Land" shall mean the tenant's interest and estate in the Mortgaged

Lease and in all recorded and unrecorded extensions, amendments, supplements and restatements thereof, together with all right, title and interest of the tenant under the Mortgaged Lease in the land described in Schedule A annexed to this

Mortgage, together with all of the Mortgagor's reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way demised under the Mortgaged Lease or belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way demised under the Mortgaged Lease or belong, relate or be appurtenant thereto.

"Landlord" shall mean any landlord, lessor, franchisor, licensor or

grantor, as applicable.

"Lenders" shall have the meaning assigned to such term in the Preamble

hereof.

"Letters of Credit" shall have the meaning assigned to such term in

the Credit Agreement.

"Liability Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (ii) and, to the extent applicable, (vi) and (vii) of Section 8.1 hereof.

"Lien" shall have the meaning assigned to such term in the Credit

Agreement.

"Loan Documents" shall have the meaning assigned to such term in the

Credit Agreement.

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"Loan Parties" shall have the meaning assigned to such term in the

Credit Agreement.

"Loans" shall have the meaning assigned to such term in the Credit

Agreement.

"Material Adverse Effect" shall mean (a) a materially adverse effect

on the business, property, results of operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Mortgagor to perform any of its obligations under this Mortgage or (c) material impairment of the rights of or benefits or remedies available to the Mortgagee under this Mortgage including, without limitation, any material impairment of the value or utility of the Mortgaged Property or the Lien of this Mortgage.

"Mortgage" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgaged Lease" shall have the meaning assigned to such term in

Recital F hereof.

"Mortgaged Property" shall have the meaning assigned to such term in

Section 2.1 hereof.

"Mortgagee" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor's Interest" shall have the meaning assigned to such term in

Section 2.2 hereof.

"Net Cash Proceeds" shall have the meaning assigned to such term in

the Credit Agreement.

"Net Condemnation Award" shall have the meaning assigned to such term

in Section 10.2 hereof.

"Net Insurance Proceeds" shall have the meaning assigned to such term

in Section 10.1 hereof.

"Officers' Certificate" shall mean, as applied to any corporation, a

certificate executed on behalf of such corporation by its Chairman of the Board
(if an officer) or its Chief Executive Officer or one of its Vice Presidents (or
an equivalent officer) and by its Chief Financial Officer, Vice President-
Finance or its Treasurer (or an equivalent officer) or any Assistant Treasurer
in their official (and not individual) capacities; provided, however, that every

Officers' Certificate with respect to the compliance with a condition precedent
to the making of any Loan or the taking of any other action hereunder shall
include (i) a statement that the officers making or giving such Officers'
Certificate have read such condition and any definitions or other provisions
contained in this Agreement relating thereto, and (ii) a statement as to
whether, in the opinion of the signers, such condition has been complied with.

"Permit" shall mean any and all permits, certificates, approvals,

authorizations, consents, licenses, variances, franchises or other instruments,
however characterized, of any Governmental Authority (or any Person acting on
behalf of a Governmental Author-

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ity) now or hereafter acquired or held, together with all amendments,
modifications, extensions, renewals and replacements of any thereof issued or in
any way furnished in connection with the Mortgaged Property including, without
limitation, building permits, certificates of occupancy, environmental
certificates, industrial permits or licenses and certificates of operation.

"Permitted Collateral Liens" shall have the meaning assigned to such

term in Section 4.7(v) hereof.

"Permitted Liens" shall have the meaning assigned to such term in the

Credit Agreement.

"Person" shall have the meaning assigned to such term in the Credit

Agreement.

"Plans and Specifications" shall have the meaning assigned to such

term in Section 10.4(i) hereof.

"Premises" shall mean, collectively, the Land and the Improvements.

"Prior Liens" shall mean, collectively, the Liens identified in

Schedule B annexed to this Mortgage.

"Proceeds" shall mean, collectively, any and all (i) proceeds of the

conversion, voluntary or involuntary, of any of the Mortgaged Property or any
portion thereof into cash or liquidated claims, (ii) proceeds of any insurance
(except payments made to a Person which is not a party to this Mortgage),
indemnity, warranty, guaranty or claim payable to the Mortgagee or to the
Mortgagor from time to time with respect to any of the Mortgaged Property
including, without limitation, all Net Insurance Proceeds, (iii) payments (in
any form whatsoever) made or due and payable to the Mortgagor from time to time
in connection with any requisition, confiscation, condemnation, seizure or
forfeiture of all or any portion of the Mortgaged Property by any Governmental
Authority (or any Person acting on behalf of a Governmental Authority)
including, without limitation, all Net Condemnation Awards, (iv) products of the
Mortgaged Property and (v) other amounts from time to time paid or payable under
or in connection with any of the Mortgaged Property including, without
limitation, refunds of real estate taxes and assessments, including interest
thereon.

"Property Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (i), (iii), (iv), (v) and, to the extent applicable, (vii) of Section 8.1 hereof.

"Prudent Operator" shall mean a prudent operator of property similar

in use and configuration to the Premises and located in the locality where the Premises are located.

"Real Property Officers' Certificate" shall mean the Officers'

Certificate delivered pursuant to Section [4.02(h)(12)] of the Credit Agreement.

"Records" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees,

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appraisals, studies and data relating to the Mortgaged Property or the construction of any Alteration or the maintenance of any Permit.

"Remedial Action" shall have the meaning assigned to such term in the

Credit Agreement.

"Rental Value" shall mean the sum of (x) the total estimated gross

rental income from tenant occupation of the Improvements as furnished and equipped under Subleases and (y) the total amount of all other Charges which are the legal obligation of the Tenants of the Premises under Subleases.

"Rents" shall mean, collectively, any and all rents, additional rents,

royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Sublease to secure performance of the Tenant's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Sublease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Sublease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Mortgagor under any Sublease or otherwise, and any award in the event of the bankruptcy of any Tenant under or guarantor of a Sublease.

"Requirements of Law" shall mean, collectively, any and all

requirements of any Governmental Authority including, without limitation, any and all orders, decrees, determinations, laws, treaties, ordinances, rules, regulations or similar statutes or case law.

"Restoration" shall have the meaning assigned to such term in Section

10.3 hereof.

"Restoration Commitment" shall have the meaning assigned to such term

in Section 10.4(iii) hereof.

"Restoration Election Notice" shall have the meaning assigned to such

term in Section 10.3 hereof.

"Restoration Letter of Credit" shall have the meaning assigned to such

term in Section 10.4(iii) hereof.

"Secured Obligations" shall mean all obligations (whether or not

constituting future advances, obligatory or otherwise) of the Borrower and any and all of the other Loan Parties from time to time arising under or in respect hereof, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents (including, without limitation, the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Mortgage, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents), in each case

whether (i) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due whether at stated maturity, by acceleration or otherwise, (ii) arising in the regular course of business or otherwise, (iii) for payment or performance and/or (iv) now existing or hereafter arising (including, without limitation, interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other Per-

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son, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding).

"Secured Parties" shall have the meaning assigned to such term in

Recital [I] hereof.

"Security Agreement" shall have the meaning assigned to such term in

the Credit Agreement.

"Security Documents" shall have the meaning assigned to such term in

the Credit Agreement.

"Subleases" shall mean, collectively, any and all interests of the

Mortgagor, as Landlord, in all leases and subleases of space, tenancies, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, relating in any manner to the Premises and any and all amendments, modifications, supplements, replacements, extensions and renewals if any thereof, whether now in effect or hereafter coming into effect.

"Subordination Agreement" shall mean a subordination, nondisturbance

and attornment agreement substantially in the form of Exhibit 1 annexed to this

Mortgage.

"Subsidiaries" shall have the meaning assigned to such term in the

Credit Agreement.

"Taking" shall mean any taking of the Mortgaged Property or any part

thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part thereof, by any Governmental Authority, civil or military.

"Tax Escrow Fund" shall have the meaning assigned to such term in

Section 7.2 hereof.

"Tenant" shall mean any tenant, lessee, sublessee, franchisee,

licensee, grantee or obligee, as applicable.

"UCC" shall mean the Uniform Commercial Code as in effect on the date

hereof in the jurisdiction in which the Premises are located; provided, however,

that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any item or portion of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the jurisdiction in which the Premises are located, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

SECTION 1.2 Interpretation. In this Mortgage, unless otherwise

specified, (i) singular words include the plural and plural words include the singular, (ii) words importing any gender include the other gender, (iii) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors, administrators and personal representatives, (iv) references to any statute or other law include all applicable rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, con-

solidating or replacing the statute or law referred to, (v) the words "consent," "approve" and "agree," and derivations thereof or words of similar import, mean the prior written consent, approval or agreement of the Person in question, (vi) the words "include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation," (vii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import, refer to this Mortgage in its entirety, (viii) references to Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are to the Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses hereof, (ix) the Schedules and Exhibits to this Mortgage, in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, are incorporated herein by reference, (x) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience only and shall not affect the constructions of any provisions hereof and (xi) all obligations of the Mortgagor hereunder shall be satisfied by the Mortgagor at the Mortgagor's sole cost and expense.

SECTION 1.3 Resolution of Drafting Ambiguities. The Mortgagor

acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., Mortgagee) shall not be employed in the interpretation

hereof.

ARTICLE II

GRANTS AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Mortgaged Property. The Mortgagor hereby

grants, mortgages, bargains, sells, assigns and conveys to the Mortgagee, and hereby grants to the Mortgagee, a mortgage lien and security interest in and upon, all of the Mortgagor's estate, right, title and interest in, to and under the following property, whether now owned or held or hereafter acquired from time to time (collectively, the "Mortgaged Property"):

- (i) Land;
- (ii) Improvements;
- (iii) Subleases;
- (iv) Rents;
- (v) Permits;
- (vi) Contracts;
- (vii) Records; and
- (viii) Proceeds;

TO HAVE AND TO HOLD the Mortgaged Property, together with all estate, right, title and interest of the Mortgagor and anyone claiming by, through or under the Mortgagor in and to the Mortgaged Property and all rights and appurtenances relating thereto, unto the Mortgagee, its successors and assigns, for the purpose of securing the payment and performance in full of all the Secured Obligations.

SECTION 2.2 Assignment of Subleases and Rents. As additional

security for the payment and performance in full of all the Secured Obligations and subject to the provisions of Article VI hereof, the Mortgagor absolutely,

presently, unconditionally and irrevocably assigns, transfers and sets over to the Mortgagee, and grants to the Mortgagee, all of the Mortgagor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Subleases including, without limitation, the following (such assigned rights, the "Mortgagor's Interest"):

- (i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Subleases;
- (ii) all claims, rights, powers, privileges and remedies of the

Mortgagor, whether provided for in the Subleases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants to perform or comply with any term of the Subleases;

(iii) all rights to take all actions upon the happening of a default under the Subleases as shall be permitted by the Subleases or by law including, without limitation, the commencement, conduct and consummation of proceeding at law or in equity; and

(iv) the full power and authority, in the name of the Mortgagor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Mortgagor, as Landlord, is or may be entitled to take under the Subleases.

SECTION 2.3 Secured Obligations. This Mortgage secures, and the

Mortgaged Property is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.4 Future Advances. This Mortgage shall secure future

advances. The maximum aggregate amount of all advances of principal under the Credit Agreement (which advances are obligatory to the extent the conditions set forth in the Credit Agreement relating thereto are satisfied) that may be outstanding hereunder at any time is \$430,000,000, plus interest thereon, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Mortgagee by reason of any default by the Mortgagor under the terms hereof, together with all other sums secured hereby.

SECTION 2.5 No Release. Nothing set forth in this Mortgage shall

relieve the Mortgagor from the performance of any term, covenant, condition or agreement on the Mortgagor's part to be performed or observed under or in respect of any of the Mortgaged Property or from any liability to any Person under or in respect of any of the Mortgaged Property or shall impose any obligation on the Mortgagee or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Mortgagor's part to be so performed or observed or shall impose any liability on the Mortgagee or any other Secured Party for any act or omission on the part of the Mortgagor relating thereto or for any

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breach of any representation or warranty on the part of the Mortgagor contained in this Mortgage, any Interest Rate Protection Agreement, or any other Loan Document, or under or in respect of the Mortgaged Property or made in connection herewith or therewith. The obligations of the Mortgagor contained in this Section 2.5 shall survive the termination hereof and

the discharge of the Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

SECTION 3.1 Authority and Validity.

The Mortgagor represents and warrants that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(ii) it is duly qualified to transact business and is in good standing in the state in which the Mortgaged Property is located;

(iii) it has full organizational power and lawful authority to execute and deliver this Mortgage and to mortgage and grant a Lien on and security interest in the Mortgaged Property and otherwise assign the Mortgagor's Interest and otherwise perform its obligations as contemplated herein, and all corporate and governmental actions, consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained; and

(iv) this Mortgage is a legal, valid and binding obligation of the Mortgagor, enforceable against the Mortgagor in accordance with its terms.

SECTION 3.2 Warranty of Title. The Mortgagor represents and

warrants that:

(i) it owns the tenant's interest in the Mortgaged Lease and has good

and marketable title to the Premises and the Landlord's interest and estate under or in respect of the Subleases and good title to the interest it purports to own or hold in and to each of the Permits, the Contracts and the Records, in each case subject to no Liens, except for Prior Liens;

(ii) (a) the Mortgaged Lease is a valid and subsisting lease, superior and paramount to all other leases respecting the property to which such Mortgaged Lease relates, (b) the Mortgaged Lease is in full force and effect and no default (nor any event which, with notice or lapse of time or both, would constitute such a default) has occurred or is continuing under the Mortgaged Lease and (c) the Mortgaged Lease is not subject to any defenses, offsets or counterclaims and there have been no renewals or extensions of or supplements, modifications or amendments to the Mortgaged Lease not previously disclosed to Mortgagee;

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(iii) with respect to each Sublease relating to the Mortgaged Property, each such Sublease is in full force and effect and no default (nor any event which, with notice or lapse of time or both, would constitute such a default) has occurred or is continuing thereunder;

(iv) it is in actual possession of the Premises;

(v) it has good title to the interest it purports to own or hold in and to all rights and appurtenances to or that constitute a portion of the Mortgaged Property;

(vi) it is in compliance with each term, condition and provision of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property; and

(vii) this Mortgage creates and constitutes a valid and enforceable first priority Lien on the Mortgaged Property, and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Fixtures, which first priority Lien and first priority security interest are subject only to Prior Liens.

SECTION 3.3 Condition of Mortgaged Property. The Mortgagor

represents and warrants that:

(i) there has been issued and there remains in full force and effect subject to no revocation, suspension, forfeiture or modification, each and every Permit necessary for the present and contemplated use, operation and occupancy of the Premises by the Mortgagor and its Tenants and the conduct of their respective businesses and all required zoning, building code, land use, environmental and other similar Permits, except to the extent that such failure, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) the Premises and the present and contemplated use and occupancy thereof comply with all applicable zoning ordinances, building codes, land use laws, set back or other development and use requirements of Governmental Authorities, except to the extent that such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) the Premises are served by all utilities (including, without limitation, public water and sewer systems) necessary for the present and contemplated use thereof, and all utility services are provided by public utilities and the Premises have accepted or are equipped to accept such utility services and the Mortgagor has not received notice of termination of such utility service;

(iv) all public roads and streets necessary for service of and access to the Premises for the present and contemplated use thereof have been completed and have been dedicated and accepted as such by the appropriate Governmental Authorities;

(v) the Mortgagor has access to the Premises from public roads and, to the extent applicable, public or private rail or waterway, sufficient to allow the Mortgagor and its Tenants and in-

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vitees to conduct their respective businesses at the Premises in accordance with sound commercial practices and the Mortgagor has not received notice of termination of such access;

(vi) the Mortgagor has not received notice of any Taking or the commencement or pendency of any action or proceeding therefor;

(vii) there has not occurred any Destruction of the Premises or any

portion thereof as a result of any fire or other casualty, which as of the date hereof has not been restored;

(viii) there are no disputes regarding boundary lines, location, encroachments or possession of any portions of the Mortgaged Property and, to the best knowledge of Mortgagor after due and diligent inquiry, no state of facts exists which could give rise to any such claim;

(ix) all liquid and solid waste disposal, septic and sewer systems located on the Premises are in a good and safe condition and repair and in compliance with all Requirements of Law, except to the extent that such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(x) no portion of the Premises is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Premises is located within such area, the Mortgagor has obtained the insurance prescribed in Article VIII hereof;

(xi) the Premises are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a portion of such lot or lots, and no other land or improvements is assessed and taxed together with the Premises or any portion thereof; and

(xii) there are no options or rights of first refusal to purchase or acquire all or any portion of the Mortgaged Property.

SECTION 3.4 Subleases. The Mortgagor represents and warrants that:

(i) the Subleases identified in the Real Property Officers' Certificate are the only Subleases in existence on the date hereof with respect to the Premises;

(ii) true copies of such Subleases have been previously delivered to the Mortgagee and there are no agreements with any Tenant under such Subleases other than those agreements expressly set forth therein;

(iii) the Mortgagor is the sole owner of all of the Mortgagor's Interest in such Subleases;

(iv) each of such Subleases is in full force and effect, constitutes a legal, valid and binding obligation of the Mortgagor and the applicable Tenant thereunder, and is enforceable against the Mortgagor and such Tenant in accordance with its terms, except as the enforceability

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thereof may be limited by bankruptcy, insolvency, or other similar laws of general application affecting the enforcement of creditor's rights;

(v) there is no default by Mortgagor or, to the best of Mortgagor's knowledge, by any Tenant, under any of such Subleases and there is existing no condition which with the giving of notice or passage of time or both would cause a default thereunder;

(vi) all Rents due under such Subleases have been paid in full;

(vii) none of the Rents reserved under such Subleases have been assigned or otherwise pledged or hypothecated except in favor of the Mortgagee pursuant to the provisions hereof;

(viii) none of the Rents (other than any security deposit collected in accordance with the provisions of the applicable Sublease) have been collected for more than one (1) month in advance;

(ix) there exists no offsets or defenses to the payment of any portion of the Rents and the Mortgagor owes no monetary obligation to any Tenant under any such Sublease;

(x) the Mortgagor has received no notice from any Tenant challenging the validity or enforceability of any such Sublease;

(xi) no such Sublease contains any option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; and

(xii) each such Sublease is subordinate to this Mortgage either pursuant to its terms or pursuant to a recordable Subordination Agreement.

SECTION 3.5 Insurance. The Mortgagor represents and warrants that

(i) the Premises and the use, occupancy and operation thereof comply in all material respects with all Insurance Requirements and, to the best knowledge of the Mortgagor after due and diligent inquiry, there exists no default under any Insurance Requirement which could reasonably be expected to have a Material Adverse Effect, (ii) all premiums due and payable with respect to the Insurance Policies have been paid and (iii) all Insurance Policies are in full force and effect and the Mortgagor has not received notice of violation or cancellation thereof.

SECTION 3.6 Charges. The Mortgagor represents and warrants that

all Charges imposed upon or assessed against the Mortgaged Property have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable.

SECTION 3.7 Environmental. Except as set forth in Schedule 3.17 to

the Credit Agreement, the Mortgagor represents and warrants that:

(i) it has obtained all Permits which are necessary with respect to the ownership and operation of its business and the Mortgaged Property under any and all applicable Environmental Laws and is in compliance with all terms and conditions thereof, except to the extent that such

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noncompliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) it is in compliance with any and all applicable Environmental Laws including, without limitation, all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws, except to the extent that such noncompliance, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice of demand letter pending or threatened against it or any Affiliate under the Environmental Laws which could result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect; and

(iv) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance with the Environmental Laws, or which could reasonably be expected to give rise to any common law or legal liability including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other Environmental Law or related common law theory or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing or notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials which could reasonably be expected to result in a fine, penalty or other cost or expense, which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.8 No Conflicts, Consents, etc. Neither the execution and

delivery hereof by the Mortgagor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Mortgagor is a party, or by which it may be bound or to which any of its properties or assets may be subject, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (ii) conflicts with any Requirement of Law applicable to the Mortgagor or its property or (iii) results in or requires the creation or imposition of any Lien (other than the Lien contemplated hereby) upon or with respect to any of the Mortgaged Property. No consent of any party (including, without limitation, equityholders or creditors of the Mortgagor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required for (i) the granting of a mortgage Lien on and security interest in the Mortgaged Property by the Mortgagor granted by it pursuant to this Mortgage or for the execution, delivery or performance hereof by the Mortgagor except as set forth in the Real Property Officers' Certificate, except for applicable recording and filing requirements, or (ii) the exercise by the Mortgagee of the remedies in respect of the Mortgaged Property pursuant to this Mortgage.

SECTION 3.9 Benefit to the Mortgagor. The Mortgagor represents and

warrants that it will receive substantial benefit as a result of the execution, delivery, and performance of the Loan Documents.

ARTICLE IV

CERTAIN COVENANTS OF MORTGAGOR

SECTION 4.1 Payment. The Mortgagor shall pay as and when the same

shall become due, whether at its stated maturity, by acceleration or otherwise, each and every amount payable by the Mortgagor under the Loan Documents and any Interest Rate Protection Agreements.

SECTION 4.2 Preservation of Corporate Existence. The Mortgagor shall:

(i) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization;

(ii) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Mortgaged Property is located; and

(iii) preserve and maintain in full force and effect all consents, authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof.

SECTION 4.3 Title. The Mortgagor shall:

(i) (A) keep in effect all rights and appurtenances to or that constitute a part of the Mortgaged Property and (B) protect, preserve and defend its interest in the Mortgaged Property and title thereto;

(ii) (A) comply with each of the terms, conditions and provisions of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property, (B) forever warrant and defend to the Mortgagee the Lien and security interests created and evidenced hereby and the validity and priority hereof in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Mortgaged Property or any of the rights of the Mortgagee hereunder and (C) maintain a valid and enforceable first priority Lien on the Mortgaged Property and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Mortgaged Property, which first priority Lien and security interest shall be subject only to Permitted Collateral Liens; and

(iii) immediately upon obtaining knowledge of the pendency of any proceedings for the eviction of the Mortgagor from the Mortgaged Property or any part thereof by paramount title or otherwise questioning the Mortgagor's right, title and interest in, to and under the Mortgaged Property as warranted in this Mortgage, or of any condition that could give rise to any such proceedings, notify the Mortgagee thereof. The Mortgagee may participate in such proceedings and the Mortgagor will deliver or cause to be delivered to the Mortgagee all instruments requested by the Mortgagee to permit such participation. In any such proceedings, the Mortgagee may be represented by counsel selected by Mortgagor reasonably satisfactory to the Mortgagee at the expense of the Mortgagor. If, upon the resolution of such proceedings, the Mortgagor shall suffer a

loss of the Mortgaged Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to the Mortgagee to be applied as Net Cash Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section [2.13(g)] of the Credit

Agreement.

SECTION 4.4 Maintenance and Use of Mortgaged Property; Alterations.

(i) Maintenance. The Mortgagor shall cause the representations and

warranties set forth in Section 3.3 hereof to continue to be true in each and

every respect and shall pay or cause to be paid when due all Charges, costs and expenses relating thereto.

(ii) Maintenance of Premises. The Mortgagor shall not commit or

suffer any waste on the Premises. The Mortgagor shall, at all times, maintain the Premises in good, safe and insurable operating order, condition and repair, reasonable wear and tear excepted, and shall as quickly as practicable make or cause to be made all repairs, structural or nonstructural, which are necessary or appropriate in the conduct of the Mortgagor's business. The Mortgagor shall (A) not, except as permitted in Section 4.4(iii) hereof, alter the occupancy or

use of all or any portion of the Premises without the prior written consent of the Mortgagee and (B) take all other actions which from the character or use of the Premises may be necessary or appropriate to maintain and preserve its value. Except to the extent permitted pursuant to the provisions of Section 4.4(iii)

hereof, the Mortgagor shall not remove, demolish or alter the design or structural character of any Improvement now or hereafter erected upon all or any portion of the Premises, or permit any such removal, demolition or alteration, without the prior written consent of the Mortgagee.

(iii) Alterations. The Mortgagor shall not, without the prior

written consent of the Mortgagee (which consent shall not be unreasonably withheld) and the consent of Lessor, if any, as may be required under the Mortgaged Lease, make any Alteration to the Premises that, in each instance, costs more to effect than \$250,000 or which, during any calendar year, in the aggregate, cost more than \$1,000,000 to effect. No prior written consent of the Mortgagee shall be required for any Alteration to the Premises that, in each instance, costs less than \$250,000 to effect or which, during any calendar year, in the aggregate, do not cost more than \$1,000,000 to effect. Whether or not the making of any Alteration shall require the consent of the Mortgagee pursuant to the immediately preceding sentence, the Mortgagor shall (A) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements and (B) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of Article X

hereof.

(iv) Permits. The Mortgagor shall maintain, or cause to be

maintained, in full force and effect all Permits contemplated by Section 3.3(i) hereof. Unless and to the extent contested by the Mortgagor in accordance with the provisions of Article X hereof, the Mortgagor shall comply with all

requirements set forth in the Permits and all Requirements of Law applicable to all or any portion of the Mortgaged Property or the condition, use or occupancy of all or any portion thereof or any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force.

(v) Zoning. The Mortgagor shall not initiate, join in, or consent to

any change in the zoning or any other permitted use classification of the Premises without the prior written consent of the Mortgagee.

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SECTION 4.5 Notices Regarding Certain Defaults. The Mortgagor

shall, promptly upon receipt of any written notice regarding (i) any default by the Mortgagor relating to the Mortgaged Property or any portion thereof or (ii) the failure to discharge any of Mortgagor's obligations with respect to the Mortgaged Property or any portion thereof described herein, furnish a copy of such notice to the Mortgagee.

SECTION 4.6 Access to Mortgaged Property, Books and Records; Other

Information. Upon reasonable prior notice and request to the Mortgagor, the Mortgagee, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours and such other reasonable time as may be reasonably requested by the Mortgagee to all of the Mortgaged Property including, without limitation, all of the books, correspondence and records of the Mortgagor relating thereto. The Mortgagee and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Mortgagor agrees to render to the Mortgagee at the Mortgagor's cost and expense, such clerical and other assistance as may be requested by the Mortgagee with regard thereto. The Mortgagor shall, at any and all times, within a reasonable time after written request by the Mortgagee, furnish or cause to be furnished to the Mortgagee, in such manner and in such detail as may be reasonably requested by the Mortgagee, additional information with respect to the Mortgaged Property.

SECTION 4.7 Limitation on Liens; Transfer Restrictions. Except as

permitted pursuant to the credit Agreement, the Mortgagor may not, without the prior written consent of the Mortgagee and the consent of Lessor, if any, as may

be required under the Mortgaged Lease, further mortgage, encumber, hypothecate, sell, convey or assign all or any part of the Mortgaged Property or suffer or allow any of the foregoing to occur by operation of law or otherwise; provided,

however, that so long as no Event of Default shall have occurred and be

continuing, the Mortgagor shall have the right, subject to any provision in the Mortgaged Lease, to suffer to exist the following Liens in respect of the Mortgaged Property: (i) Prior Liens (but not extensions, amendments, supplements or replacements of Prior Liens unless consented to by the Mortgagee), (ii) the Lien and security interest created by this Mortgage, (iii) Contested Liens, (iv) Liens of the kind and nature described in clause (f) of the definition of Permitted Liens and (v) Subleases to the extent permitted pursuant to the provisions of Article V hereof (the Liens described in clauses (i) through (v)

of this sentence, collectively, "Permitted Collateral Liens").

SECTION 4.8 Environmental. -----

(i) Hazardous Materials. The Mortgagor shall (A) comply with any and

all present and future Environmental Laws except where the failure to comply could not reasonably be expected to have a Material Adverse Effect, (B) not release, store, treat, handle, generate, discharge or dispose of any Hazardous Materials on, under or from the Mortgaged Property in violation of (which violation could reasonably be expected to have a Material Adverse Effect) or in a manner that could result in any material liability under any present and future Environmental Law and (C) take all necessary steps to initiate and expeditiously complete all remedial, corrective and other action to eliminate any such effect, provided, however, that Mortgagor shall not be required to

undertake any Remedial Action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP. In the event the Mortgagor fails to comply with the covenants in the preceding sentence, the Mortgagee may, in addition to any other remedies set forth herein, as agent for and at the Mortgagor's sole cost and expense, cause any necessary remediation, removal or response action relating to Hazardous

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Materials to be taken to achieve compliance with such covenants and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and shall bear interest at the Default Rate. The Mortgagee shall have the right to have an environmental report prepared as provided in Section 5.10 of the Credit Agreement. The Mortgagor shall indemnify and hold the

Mortgagee and each Lender harmless from and against all loss, cost, damage or expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain by reason of the assertion against the Mortgagee or such Lender by any party of any claim relating to such Hazardous Materials referred to in clause (i) (B) of this Section 4.8 on, under or from the

Mortgaged Property or actions taken with respect thereto as authorized hereunder. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof; and

(ii) Asbestos. The Mortgagor shall not install nor permit to be

installed in or removed from the Mortgaged Property, asbestos or any asbestos-containing material (collectively, "ACM") except in compliance with all

applicable Environmental Laws, and with respect to any ACM currently present in the Mortgaged Property, the Mortgagor shall promptly either (A) remove any ACM which such Environmental Laws require to be removed or (B) otherwise comply with such Environmental Laws with respect to such ACM, all at the Mortgagor's sole cost and expense. If the Mortgagor shall fail so to remove any ACM or otherwise comply with such laws or regulations, the Mortgagee may, in addition to any other remedies set forth herein, take reasonable or necessary steps to eliminate such ACM from the Mortgaged Property or otherwise comply with applicable law, regulations or orders and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and bear interest at the Default Rate. The Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain, by reason of the assertion against the Mortgagee or such Lender by any

third party of a claim as a result of the presence of any ACM and any removal thereof to the extent required by applicable Environmental Laws or compliance with all applicable Environmental Laws. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof.

SECTION 4.9 Estoppel Certificates. The Mortgagor shall, from time

to time, upon ten (10) Business Days' prior written request of the Mortgagee, execute, acknowledge and deliver to the Mortgagee an Officers' Certificate stating that this Mortgage, the Credit Agreement, each Interest Rate Protection Agreement, and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Mortgage, the Credit Agreement, such Interest Rate Protection Agreement or such other Loan Document, as applicable, is in full force and effect as modified and setting forth such modifications) and stating the date to which principal and interest have been paid on the Loans.

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ARTICLE V

SUBLEASES

SECTION 5.1 Mortgagor's Affirmative Covenants with Respect to

Subleases. With respect to each Sublease, the Mortgagor shall:

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- (i) observe and perform all the obligations imposed upon the Landlord under such Subleases;
 - (ii) promptly send copies to the Mortgagee of all notices of default which the Mortgagor shall send or receive thereunder; and
 - (iii) enforce, in a commercially reasonable manner, all of the material terms, covenants and conditions contained in such Sublease upon the part of the Tenant thereunder to be observed or performed.

SECTION 5.2 Mortgagor's Negative Covenants with Respect to Subleases.

With respect to each Sublease, the Mortgagor shall not, without the prior written consent of the Mortgagee:

- (i) receive or collect, or permit the receipt or collection of, any Rent under such Sublease more than one (1) month in advance of the respective period in respect of which such Rent is to accrue, except:
 - (A) in connection with the execution and delivery of such Sublease (or of any amendment to such Sublease), Rent thereunder may be collected and received in advance in an amount not in excess of one (1) month's Rent;
 - (B) the amount held by Landlord as a reasonable security deposit thereunder; and
 - (C) any amount received and collected for escalation and other charges in accordance with the terms of such Sublease;
- (ii) assign, transfer or hypothecate (other than to the Mortgagee hereunder) any Rent under such Sublease whether then due or to accrue in the future or the interest of the Mortgagor as Landlord under such Sublease;
- (iii) enter into any amendment or modification of such Sublease which would change the unexpired term thereof or decrease the amount of the Rents payable thereunder or impair the value or utility of the Mortgaged Property or the security provided by this Mortgage;
- (iv) terminate (whether by exercising any contractual right of the Mortgagor to recapture leased space or otherwise) or permit the termination of such Sublease or accept surrender of all or any portion of the space demised under such Sublease prior to the end of the term thereof or accept assignment of such Sublease to the Mortgagor unless:

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- (A) the Tenant under such Sublease has not paid the equivalent of two (2) months' Rent and the Mortgagor has made reasonable efforts to collect such Rent; or
- (B) the Mortgagor shall deliver to the Mortgagee an Officers' Certificate to the effect that the Mortgagor has entered into a new Sublease (or Subleases) for the space covered by the terminated or assigned Sublease with a term (or terms)

which expire(s) no earlier than the date on which the terminated or assigned Sublease was to expire (excluding renewal options), and with a Tenant(s) having a creditworthiness (as reasonably determined by the Mortgagor) sufficient to pay the Rent due under the new Sublease (or Subleases), and the tenant(s) shall have commenced paying rent, including all operating expenses and other amounts payable under the new Sublease (or Subleases) without any abatement or concession; or

(C) the Mortgagor or a subsidiary desires to use the space leased for its own purposes; or

(v) waive, excuse, condone or in any manner discharge or release any Tenants of or from the obligations of such Tenants under their respective Subleases or guarantors of Tenants from obligations under any guarantees of the Subleases except as the same would be done by a Prudent Operator with due regard for the security afforded the Mortgagee thereby.

SECTION 5.3 Additional Requirements with Respect to New Subleases. In addition to the requirements of Sections 5.1 and 5.2 hereof, the Mortgagor shall not enter into any Sublease after the date hereof unless the Tenant under such Sublease has entered into a Subordination Agreement.

ARTICLE VI

CONCERNING ASSIGNMENT OF SUBLEASES AND RENTS

SECTION 6.1 License to the Mortgagor. The Mortgagee hereby grants to the Mortgagor a license to collect and apply the Rents and to enforce the obligations of Tenants under the Subleases. Immediately upon the occurrence and during the continuance of any Event of Default, the license granted in the immediately preceding sentence shall cease and terminate, with or without any notice, action or proceeding or the intervention of a receiver appointed by a court.

SECTION 6.2 Collection of Rents by the Mortgagee.

(i) Any Rents receivable by the Mortgagee hereunder, after payment of all proper costs and charges, shall be applied to the Secured Obligations. The Mortgagee shall be accountable to the Mortgagor only for Rents actually received by the Mortgagee. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

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(ii) The Mortgagor hereby authorizes Tenant under each Sublease to rely upon and comply with any and all notices or demands from the Mortgagee for payment of Rents to the Mortgagee and the Mortgagor shall have no claim against Tenant for Rents paid by Tenant to the Mortgagee pursuant to such notice or demand.

SECTION 6.3 No Release. Neither this Mortgage nor any action or inaction on the part of the Mortgagee shall release Tenant under any Sublease, any guarantor of any Sublease or the Mortgagor from any of their respective obligations under such Subleases or constitute an assumption of any such obligation on the part of the Mortgagee. No action or failure to act on the part of the Mortgagor shall adversely affect or limit the rights of the Mortgagee under this Mortgage or, through this Mortgage, under such Subleases. Nothing contained herein shall operate or be construed to (i) obligate the Mortgagee to perform any of the terms, covenants or conditions contained in any Sublease or otherwise to impose any obligation upon the Mortgagee with respect to such Sublease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in such Sublease in the event that Tenant under such Sublease shall have been joined as a party defendant in any action by which the estate of such Tenant shall be terminated) or (ii) place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Premises.

SECTION 6.4 Irrevocable Interest. All rights, powers and privileges of the Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and the Mortgagor shall not take any action under the Subleases or otherwise which is inconsistent with this Mortgage or any of the terms hereof and any such action inconsistent herewith or therewith shall be void.

SECTION 6.5 Amendment to Subleases. Each Sublease, including,

without limitation, all amendments, modifications, supplements, replacements, extensions and renewals thereof, shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

ARTICLE VII

TAXES AND CERTAIN STATUTORY LIENS

SECTION 7.1 Payment of Charges. Unless and to the extent contested

by the Mortgagor in accordance with the provisions of Article IX hereof, the

Mortgagor shall pay and discharge, or cause to be paid and discharged, from time to time when the same shall become due and payable by Mortgagor, to the extent such payment and discharge shall be due from Mortgagor pursuant to terms of the Mortgaged Lease, all Charges. The Mortgagor shall, upon the Mortgagee's request, deliver to the Mortgagee receipts evidencing the payment of all such Charges.

SECTION 7.2 Escrow of Taxes. From and after the occurrence of an

Event of Default, at the option and upon the request of the Mortgagee, the Mortgagor shall deposit with the Mortgagee in an account maintained by the Mortgagee (the "Tax Escrow Fund"), on the first day of each month, an amount

estimated by the Mortgagee to be equal to one-twelfth of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. Such amounts shall be

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held by the Mortgagee without interest to the Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such priority as the Mortgagee shall determine, on or before the respective dates on which such obligations or any part thereof would become delinquent. Nothing contained in this Article VII shall (i) affect any right or remedy of

the Mortgagee under any provision hereof or of any statute or rule of law to pay any such amount as provided above from its own funds and to add the amount so paid, together with interest at the Default Rate during such time that any amount remains outstanding, to the Secured Obligations or (ii) relieve the Mortgagor of its obligations to make or provide for the payment of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. During the continuance of any Event of

Default, the Mortgagee may, at its option, apply all or any part of the sums held pursuant to this Section 7.2 to payment and performance of the Secured

Obligations. The Mortgagor shall redeposit with the Mortgagee an amount equal to all amounts so applied as a condition to the cure, if any, of such Event of Default in addition to fulfillment of any other required conditions notwithstanding the foregoing provisions of this subsection 7.2, no deposit with Mortgagee in respect of any item contemplated by this subsection 7.2 shall be required if and for so long as deposits in respect of such item are made by Mortgagor to Lessor under the Mortgaged Lease.

SECTION 7.3 Certain Statutory Liens. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall timely pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions and social security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or which might result in forfeiture of all or any part of the Mortgaged Property.

SECTION 7.4 Stamp and Other Taxes. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Secured Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof the Mortgagee may advance the same and the amount so advanced shall be payable by the Mortgagor to the Mortgagee in accordance with the provisions of Section 14.5 hereof.

SECTION 7.5 Certain Tax Law Changes. In the event of the passage

after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any Charges, and imposing any Charges, either directly or indirectly, on this Mortgage, any Interest Rate Protection Agreement or any other Loan Document, the Mortgagor shall promptly pay to the Mortgagee such amount or amounts as may be necessary from time to time to pay any such Charges.

SECTION 7.6 Proceeds of Tax Claim. In the event that the proceeds

of any tax claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. The Mortgagee shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such

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proceeds in excess of any deficiency claim of the Mortgagee shall in a reasonably prompt manner be released to the Mortgagor.

ARTICLE VIII

INSURANCE

SECTION 8.1 Required Insurance Policies and Coverages. The

Mortgagor shall comply with all provisions, representations, warranties, conditions and covenants of the Mortgaged Lease pertaining to insurance. Mortgagor shall maintain in full force and effect the greater of the following insurance coverages or the insurance coverages required pursuant to the terms of the Mortgaged Lease in respect of the Premises; provided, however, that to the

extent that the terms of this Mortgage and the Mortgaged Lease require identical coverage, Mortgagor need only maintain one policy or group of policies providing such coverage in respect of the Premises:

(i) Physical hazard insurance on an "all risk" basis covering, without limitation, hazards commonly covered by fire and extended coverage, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in an amount equal to the Full Replacement Cost of the Improvements, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed any such requirements, as would be maintained by a Prudent Operator;

(ii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any other adjoining streets, sidewalks and passageways, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon the Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed such requirements, in such amounts as would be maintained by a Prudent Operator;

(iii) Explosion insurance in respect of any boilers, machinery and similar apparatus located on or comprising the Premises, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require, and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(iv) Business interruption insurance and/or loss of "rental value" insurance covering one (1) year of loss, the term "rental value" to mean the sum of (x) the total estimated gross rental income from tenant occupancy of the Improvements as furnished and equipped under Subleases and (y) the total amount of all other charges which are the legal obligation of the Tenants of the Premises under Subleases;

(v) If the Premises are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, each as amended, or any successor

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laws, flood insurance with policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(vi) Worker's compensation insurance as required by the laws of the state where the Premises are located to protect the Mortgagor and the

Mortgagee against claims for injuries sustained in the course of employment at the Premises; and

(vii) such other insurance, against risks and with such policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require, and, if no such requirements shall have been imposed, in such amounts as would be maintained by a Prudent Operator.

SECTION 8.2 Required Form of Insurance Policies. Each Insurance

Policy described in Section 8.1 hereof shall provide that:

(i) it may not be modified, reduced, cancelled or otherwise terminated without at least thirty (30) days' prior written notice to the Mortgagee;

(ii) the Mortgagee is permitted to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due;

(iii) all losses thereunder shall be payable notwithstanding any act or negligence of the Mortgagor or its agents or employees which otherwise might have resulted in a forfeiture of all or a part of such insurance payments;

(iv) to the extent such Insurance Policy constitutes Property Insurance, all losses payable thereunder shall be payable to the Mortgagee, as loss payee, pursuant to a standard non-contributory New York mortgagee endorsement and shall be in an amount, at least sufficient to prevent coinsurance liability; and

(v) with respect to Liability Insurance, the Mortgagee shall be named as an additional insured in addition to any additional insureds required to be named under the Mortgaged Lease.

SECTION 8.3 Settlements. Settlement or adjustment of any claim

under any of the Insurance Policies, if such claim involves any loss in excess of \$1,000,000 (in the reasonable judgment of the Mortgagee), shall require the prior written approval of the Mortgagee, and the Mortgagor shall cause each such policy to contain a provision to such effect. The Mortgagor shall be permitted to settle or adjust any claim under any of the Insurance Policies, if such claim involves any loss less than or equal to \$1,000,000 (in the reasonable judgment of the Mortgagee).

SECTION 8.4 Renewals. At least ten (10) days prior to the

expiration of any Insurance Policy, the Mortgagor shall deliver to the Mortgagee an Insurance Policy or Policies renewing or extending such expiring Insurance Policy or Policies renewal or extension Insurance Certificates or other reasonable evidence of renewal or extension providing that the Insurance Policies are in full force and effect.

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SECTION 8.5 Additional Insurance. The Mortgagor shall not purchase

separate insurance policies concurrent in form or contributing in the event of loss with those Insurance Policies required to be maintained under this Article

VIII unless the Mortgagee is included thereon as an additional insured in

addition to any additional insureds required to be named under the Mortgaged Lease and, if applicable, with loss payable to the Mortgagee under an endorsement containing the provisions described in Section 8.2 hereof. The

Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to the Mortgagee the Insurance Policy or Insurance Certificate evidencing such insurance.

SECTION 8.6 Blanket Coverage. The Mortgagor may maintain the

coverages required by Section 8.1 hereof under blanket policies covering the

Premises and other locations owned or operated by the Mortgagor or an Affiliate of the Mortgagor if the terms of such blanket policies otherwise comply with the provisions of Section 8.1 hereof and contain specific coverage allocations in

respect of the Premises complying with the provisions of Section 8.1 hereof.

SECTION 8.7 Delivery After Foreclosure. In the event that the

proceeds of any insurance claim are paid after the Mortgagee has exercised its

right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the Insurance Policies required to be maintained pursuant to this Mortgage during any redemption period.

ARTICLE IX

CONTESTING OF PAYMENTS

SECTION 9.1 Contesting of Taxes and Certain Statutory Liens. The

Mortgagor may at its own expense contest the validity, amount or applicability of any Charges by appropriate legal or administrative proceedings, prosecution of which operates to prevent the collection or enforcement thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy such obligations; provided, however, that (i) any such contest shall be conducted in

good faith by appropriate proceedings instituted with reasonable promptness and diligently conducted and (ii) in connection with such contest, the Mortgagor shall have (A) made provision for the payment of such contested Charge on the Mortgagor's books if and to the extent required by GAAP, or (B) at the option and upon the request of the Mortgagee, or the Lessor if so required by the Mortgaged lease, have deposited with the Mortgagee a sum sufficient to pay and discharge such Charge and the Mortgagee's estimate of all interest and penalties related thereto, properly bonded such amount or obtained a stay of enforcement of any such Lien pending the final determination of such proceeding and (C) in the case of any contested judgment, delivered to the Mortgagee an instrument in which an insurance carrier acceptable to the Mortgagee shall have agreed in writing that full insurance coverage (subject to a customary deductible) exists in respect of such contested judgment. Notwithstanding the foregoing provisions of this Section 9.1, (i) no contest of any such obligations may be pursued by

the Mortgagor if such contest would expose the Mortgagee or any Lender to (A) any possible criminal liability or (B) unless the Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to the Mortgagee or such Lender, as the case may be, any additional civil liability for failure to comply with such obligations and (ii) if at any time payment or performance of any obligation contested by the Mortgagor pursuant to this Section 9.1 shall

become necessary to prevent the imposition

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of remedies because of non-payment, or to prevent the occurrence of a default (or a condition which, with the giving of notice or lapse of time or both, may become a default) under the Mortgaged Lease, the Mortgagor shall pay or perform the same in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 9.2 Contesting of Insurance. The Mortgagor shall not take

any action that could be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises and the Mortgagor shall otherwise comply in all respects with all Insurance Requirements in respect of the Premises; provided, however,

that the Mortgagor may, at its own expense and after written notice to the Mortgagee, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under Article VIII hereof or (ii) cause the Insurance Policy containing

any such Insurance Requirement to be replaced by a new policy complying with the provisions of Article VIII hereof.

ARTICLE X

DESTRUCTION, CONDEMNATION AND RESTORATION

SECTION 10.1 Destruction. If there shall occur any Destruction,

other than a Destruction for a de minimis amount (which, for the purposes of this Section 10.1 shall mean any Destruction for an amount less than or equal to

\$25,000), the Mortgagor shall, in addition to any notices required under the Mortgaged Lease, promptly send to the Mortgagee a written notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned, subject to the provisions of and to the greatest extent permitted by the Mortgaged Lease, and shall be paid to the Mortgagee and deposited in the Collateral Account. All such proceeds, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net

Insurance Proceeds"), shall be applied in accordance with the provisions of

Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.2 Condemnation. If there shall occur any Taking or the

commencement of any proceeding thereof, the Mortgagor shall, in addition to any notices required under the Mortgaged Lease, immediately notify the Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. The Mortgagee may, at its option, participate in any proceedings or negotiations which might result in any Taking, and the Mortgagor shall deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. The Mortgagee may be represented by counsel satisfactory to it at the expense of the Mortgagor in connection with any such participation. The Mortgagor shall pay all fees, costs and expenses incurred by the Mortgagee in connection with any Taking and in seeking and obtaining any award or payment on account thereof. Any proceeds, award or payment in respect of any Taking are hereby assigned and, subject to the provisions of and to the greatest extent permitted by the Mortgaged Lease, shall be paid to the Mortgagee. The Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in liti-

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gating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Condemnation Award"), shall be applied in accordance with the

provisions of Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.3 Restoration. So long as no Event of Default shall

have occurred and be continuing, in the event there shall be a Net Condemnation Award or Net Insurance Proceeds in an amount less than \$1,000,000, the Mortgagor shall have the right, at the Mortgagor's option, but subject nevertheless to the rights of the Lessor under the Mortgaged Lease, to apply such Net Condemnation Award or Net Insurance Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit Agreement or to

perform a restoration (each, a "Restoration") of the Premises. In the event the

Mortgagor is permitted by the terms of the Mortgaged Lease to perform a Restoration and elects to perform a Restoration or in the event that a Mortgaged Lease requires Mortgagor to perform a Restoration pursuant to the immediately preceding sentence, the Mortgagor shall within thirty (30) days after the date that the Mortgagor receives notice of collection by the Lessor or the Mortgagee, as the case may be, of the applicable Net Insurance Proceeds or Net Condemnation Award, as the case may be, deliver to the Mortgagee (i) a written notice of such election and (ii) an Officers' Certificate stating that (A) the Net Insurance Proceeds or Net Condemnation Award, as the case may be, shall be utilized to perform a Restoration in the manner contemplated by this Section 10.3 and (B) no

Event of Default has occurred and is continuing (the items described in clauses (i) and (ii) of this sentence, collectively, the "Restoration Election Notice").

In the event the Mortgagee does not receive a Restoration Election Notice within such 30-day period, the Mortgagee may apply any such Net Insurance Proceeds or Net Condemnation Award held by the Mortgagee to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit

Agreement or, at the option of the Mortgagee, may continue to hold such Net Insurance Proceeds or Net Condemnation Award in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations. In the event the Mortgagor elects to perform any Restoration contemplated by this Section 10.3, the Mortgagee shall release such Net

Condemnation Award or Net Insurance Proceeds to the Mortgagor as soon as practicable following receipt of a Restoration Election Notice in accordance with the provisions of Section 8.2(ii) of the Security Agreement. The Mortgagor

shall, within fifteen (15) days following the date of its receipt of any proceeds in respect of a Destruction or Taking, as the case may be, commence and diligently continue to perform the Restoration of that portion or portions of the Improvements subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Premises will be in the same condition and shall be of at least equal value and utility for its intended purposes as the Premises was immediately prior to such Destruction or Taking. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.4 Major Restoration. In the event there shall be a Net

Condemnation Award or Net Insurance Proceeds in an amount equal to or greater than \$1,000,000, the Mortgagee shall have the option to apply such Net Condemnation Award or Net Insurance Proceeds, as the case may be, to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f)

of the Credit Agreement or to require a Restoration of the Premises. In the event a Restoration is to be performed under this Section 10.4, the Mortgagee

shall not release any part of the Net Condemnation Award or Net Insurance Proceeds except in accordance with the provisions of Section 10.5 hereof, and

the Mortgagor shall, prior to commencing any work to effect a Restoration of the Premises, promptly (but in no event later than ninety (90) days following any Destruction or Taking) furnish to the Mortgagee:

(i) complete plans and specifications (the "Plans and Specifications") for the Restoration;

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(ii) the written consent of Lessor to the Restoration to the extent such consent is required by the terms of the Mortgaged Lease;

(iii) a certificate (an "Architect's Certificate") of an independent, reputable architect or engineer acceptable to the Mortgagee and licensed in the state where the Premises are located (A) listing all permits and approvals required by law in connection with the Restoration, (B) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained, (C) stating that the Plans and Specifications have been reviewed and approved by the signatory thereto, (D) stating such signatory's estimate (an "Estimate") of the costs

of completing the Restoration and (E) stating that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises will be approximately equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration; and

(iv) if the Estimate exceeds the Net Insurance Proceeds or Net Condemnation Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit (a "Restoration Letter of Credit") or other

irrevocable and unconditional commitment to provide funds (each, a "Restoration Commitment") for the payment of the excess cost of such Restoration, payable to or in favor of the Mortgagee, as Collateral Agent, which bond, guaranty, Restoration Letter of Credit or Restoration Commitment (A) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to the Mortgagee and, in the case of a Restoration Letter of Credit or Restoration Commitment, shall be provided by a Lender or other financial institution having capital and surplus in excess of \$500 million as shown in its most recent available statement of financial condition and (B) shall be in an amount not less than the excess of the amount of the Estimate over the amount of the Net Condemnation Award or Net Insurance Proceeds, as the case may be, then held by the Mortgagee for application toward the cost of such Restoration.

The Mortgagee shall have the right to review and approve the Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed. Promptly upon any approval of the Plans and Specifications by the Mortgagee, the Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.5 Restoration Advances Following Destruction or Taking of

Mortgaged Property. In the event the Mortgagor shall be required or permitted to perform a Restoration of the Premises as provided in Section 10.4 hereof, the

Mortgagee shall apply any Net Insurance Proceeds or the Net Condemnation Award held by the Mortgagee on account of the applicable Destruction or Taking to the payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to the Mortgagor or, at the Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other Persons rendering services or material for such Restoration, subject to the following conditions:

(i) Each request for payment shall be made on at least ten (10) days' prior notice to the Mortgagee and shall be accompanied by an Architect's Certificate stating (A) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as ap-

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proved by the Mortgagee, and in accordance with all provisions of law, (B) the sums requested are required to reimburse the Mortgagor for payments by the Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by the Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (C) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be and (D) that the amount of the Net Insurance Proceeds or Net Condemnation Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an opinion of counsel to the Mortgagor (which counsel shall be independent and acceptable to the Mortgagee), or a title insurance policy, binder or endorsement in form and substance satisfactory to the Mortgagee confirming that (A) all Liens (other than Permitted Collateral Liens) covering that part of the Restoration previously paid for, if any, have been waived and (B) there has not been filed with respect to all or any portion of the Premises any Lien (other than Permitted Collateral Liens); and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Architect's Certificate listing all Permits necessary to comply with all Requirements of Law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event that there shall be any surplus after application of the Net Condemnation Award or the Net Insurance Proceeds to Restoration of the Improvements, such surplus shall be applied as Net Cash Proceeds in accordance with Section 2.13(f) of the Credit Agreement or, at the option of the Mortgagee,

shall be held by the Mortgagee in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1 Events of Default. It shall be an Event of Default

hereunder if there shall have occurred and be continuing an Event of Default under the Credit Agreement.

SECTION 11.2 Remedies in Case of an Event of Default. If any Event

of Default shall have occurred and be continuing, the Mortgagee may at its option, in addition to any other action permitted under this Mortgage or the Credit Agreement or by law, statute or in equity, take one or more of the following actions to the greatest extent permitted by local law:

(i) by written notice to the Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

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(ii) personally, or by its agents or attorneys, (A) give notice of such Event of Default to Lessor, (B) to the extent permitted by the Mortgaged Lease, act in all respects as lessee in respect of the Mortgaged Lease and perform, on behalf of and for the account of Mortgagor, any of the obligations of lessee thereunder, (C) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Mortgagor relating thereto and, exclude the Mortgagor, its agents and servants wholly therefrom, (D) use, operate, manage and control the Premises and conduct the business thereof, (E) maintain and restore the Premises, (F) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as the Mortgagee may deem advisable, (G) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise or (H) collect and receive all Rents. The Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management except that

any amounts so received by the Mortgagee shall be applied as follows:

FIRST: to pay reasonable costs and expenses (including, without

limitation, attorneys' fees and expenses) of so entering upon, taking
possession of, holding, operating and managing the Mortgaged Property
or any part thereof, and any taxes, assessments or other charges which
the Mortgagee may consider necessary or desirable to pay, and any
other amounts due to the Mortgagee;

SECOND: without duplication of amounts applied pursuant to

clause FIRST above, to the indefeasible payment in full in cash of the

Secured Obligations (other than obligations arising under any Interest
Rate Protection Agreement) in accordance with the terms of the Credit
Agreement;

THIRD: without duplication of amounts applied pursuant to

clauses FIRST and SECOND above, to the indefeasible payment in full in

cash pro rata of the obligations arising under the Interest Rate

Protection Agreements in accordance with the terms of the Interest
Rate Protection Agreements; and

FOURTH: the balance, if any, to the Person lawfully entitled

thereto (including the Mortgagor or its successors or assigns), if all
conditions to the release hereof shall have been fulfilled, but if any
such condition shall not have been fulfilled, to be held by the
Mortgagee and thereafter applied to any future payments required to be
made in accordance with clauses FIRST, SECOND and THIRD above.

(iii) with or without entry, personally or by its agents or
attorneys, (A) sell the Mortgaged Property and all estate, right, title and
interest, claim and demand therein at one or more sales in one or more
parcels, in accordance with the provisions of Section 11.3 or (B) institute

and prosecute proceedings for the complete or partial foreclosure of the
Lien and security interests created and evidenced hereby; or

(iv) take such steps to protect and enforce its rights whether by
action, suit or proceeding at law or in equity for the specific performance
of any covenant, condition or agreement in the Credit Agreement and the
other Loan Documents, or in aid of the execution of any power granted

in this Mortgage, or for any foreclosure hereunder, or for the enforcement
of any other appropriate legal or equitable remedy or otherwise as the
Mortgagee shall elect.

SECTION 11.3 Sale of Mortgaged Property if Event of Default Occurs;

Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing,
the Mortgagee may institute an action to foreclose this Mortgage or take such
other action as may be permitted and available to the Mortgagee at law or in
equity for the enforcement of the Credit Agreement and realization on the
Mortgaged Property and proceeds thereon through power of sale or to final
judgment and execution thereof for the Secured Obligations, and in furtherance
thereof the Mortgagee may sell the Mortgaged Property at one or more sales, as
an entirety or in parcels, at such time and place, upon such terms and after
such notice thereof as may be required or permitted by law or statute or in
equity. The Mortgagee may execute and deliver to the purchaser at such sale a
conveyance of the Mortgaged Property in fee simple and an assignment or
conveyance of all the Mortgagor's Interest in the Subleases and the Mortgaged
Property, each of which conveyances and assignments shall contain recitals as to
the Event of Default upon which the execution of the power of sale herein
granted depends, and the Mortgagor hereby constitutes and appoints the Mortgagee
the true and lawful attorney in fact of the Mortgagor to make any such recitals,
sale, assignment and conveyance, and all of the acts of the Mortgagee as such
attorney in fact are hereby ratified and confirmed. The Mortgagor agrees that
such recitals shall be binding and conclusive upon the Mortgagor and that any
assignment or conveyance to be made by the Mortgagee shall divest the Mortgagor
of all right, title, interest, equity and right of redemption, including any
statutory redemption, in and to the Mortgaged Property. The power and agency
hereby granted are coupled with an interest and are irrevocable by death or
dissolution, or otherwise, and are in addition to any and all other remedies
which the Mortgagee may have hereunder, at law or in equity. So long as the

Secured Obligations, or any part thereof, remain unpaid, the Mortgagor agrees that possession of the Mortgaged Property by the Mortgagor, or any person claiming under the Mortgagor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Mortgage, the Mortgagor and any person in possession under the Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels in such manner or order as the Mortgagee in its sole discretion may elect. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or all amounts secured hereby are paid in full.

(ii) In the event of any sale made under or by virtue of this Article XI, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of the Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

(iii) The proceeds of any sale made under or by virtue of this Article XI, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article XI or otherwise, shall be applied as follows:

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FIRST: to pay the costs and expenses incurred by the Mortgagee in enforcing its remedies under this Mortgage;

SECOND: to pay the costs and expenses of the sale and of any receiver of the Mortgaged Property or any part thereof appointed pursuant to Section 11.5(ii);

THIRD: without duplication of the amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash of the Secured Obligations (other than the obligations arising under the Interest Rate Protection Agreements) in accordance with the terms of the Credit Agreement;

FOURTH: without duplication of the amounts applied pursuant to clauses FIRST, SECOND and THIRD above, to the indefeasible payment in full in cash pro rata of the obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements and

FIFTH: the balance, if any, to the Person lawfully entitled thereto (including the Mortgagor or its successors or assigns).

(iv) The Mortgagee (on behalf of any Lender or on its own behalf) or any Lender or any of their respective Affiliates may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article XI and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Mortgagee, or such Lender in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Mortgagee or such Lender is authorized to deduct under this Mortgage.

(v) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(vi) If the Premises is comprised of more than one parcel of land, the Mortgagee may take any of the actions authorized by this Section 11.3 in

respect of any or a number of individual parcels.

SECTION 11.4 Additional Remedies in Case of an Event of Default.

(i) The Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof, and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Mortgage. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, the Mortgagee shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Prop-

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erty; provided, however, that in no case shall the Mortgagee receive a greater

amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(ii) Any recovery of any judgment by the Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Mortgaged Property or any part thereof, or any conveyances, powers, rights and remedies of the Mortgagee hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Mortgagee under this Section 11.4 shall be applied in accordance with the provisions of Section 11.3(iii).

SECTION 11.5 Legal Proceedings After an Event of Default.

(i) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, the Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(ii) Upon the occurrence and during the continuance of an Event of Default, the Mortgagee shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. The Mortgagor hereby consents to the appointment of such receiver. Notwithstanding the appointment of any receiver, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Credit Agreement to the Mortgagee.

(iii) The Mortgagor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, the Mortgagor hereby expressly (A) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Mortgage, (B) waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (C) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or

proceeding brought in connection with this Mortgage and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (D) covenants not to hinder, delay or impede the execution of any power granted or delegated to the Mortgagee by this Mortgage but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Mortgagee shall not be liable for any incorrect or improper payment made pursuant to this Article XI in -----

the absence of gross negligence or willful misconduct.

SECTION 11.6 Remedies Not Exclusive. No remedy conferred upon or -----

reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of the Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may elect. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Mortgagor to pay the entire sum then due, and the Mortgagor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

The word "sale" as used in this Article XI with respect to the -----

Mortgaged Lease shall mean the sale, transfer, assignment or conveyance for value of the leasehold interest of Mortgagor in the Mortgaged Lease, together with all Mortgagor's right, title and interest in and to the other items comprising the Mortgaged Property.

ARTICLE XII

SECURITY AGREEMENT AND FIXTURE FILING

SECTION 12.1 Security Agreement. To the extent that the Mortgaged -----

Property includes personal property or items of personal property which are or are to become fixtures under applicable law, this Mortgage shall also be construed as a security agreement under the UCC; and, upon and during the continuance of an Event of Default, the Mortgagee shall be entitled with respect to such personal property to exercise all remedies hereunder, all remedies available under the UCC with respect to fixtures and all other remedies available under applicable law. Without limiting the foregoing, such personal property may, at the Mortgagee's option, (i) be sold hereunder together with any sale of any portion of the Mortgaged Property or otherwise, (ii) be sold pursuant to the UCC, or (iii) be dealt with by the Mortgagee in any other manner permitted under applicable law. The Mortgagee may require the Mortgagor to assemble such personal property and make it available to the Mortgagee at a place to be designated by the Mortgagee. The Mortgagor acknowledges and agrees that a disposition of the personal property in

accordance with the Mortgagee's rights and remedies in respect to the Mortgaged Property as heretofore provided is a commercially reasonable disposition thereof; provided, however, that the Mortgagee shall give the Mortgagor not less -----

than ten (10) days' prior notice of the time and place of any intended disposition.

SECTION 12.2 Fixture Filing. To the extent that the Mortgaged -----

Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing hereof in the real estate records of the county in which such Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to such Mortgaged Property, and the following information is applicable for the purpose of such fixture filing, to wit:

<TABLE>
<CAPTION>

Name and Address of the debtor:

<S>

The Mortgagor having the address described in the Preamble hereof.

Name and Address of the secured party:

<C>

The Mortgagee having the address described in the Preamble hereof.

This Financing Statement covers the following types or items of property:

The Mortgaged Property.

This instrument covers goods or items of personal property which are or are to become fixtures upon the property.

The name of the record owner of the Property on which such fixtures are or are to be located is the Mortgagor.

</TABLE>

ARTICLE XIII

FURTHER ASSURANCES

SECTION 13.1 Recording Documentation To Assure Security. The

Mortgagor shall, forthwith after the execution and delivery hereof and thereafter, from time to time, cause this Mortgage and any financing statement, continuation statement or similar instrument relating to any thereof or to any property intended to be subject to the Lien hereof to be filed, registered and recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the validity and priority thereof or the Lien hereof purported to be created upon the Mortgaged Property and the interest and rights of the Mortgagee therein. Mortgagor shall (if it has not already done so), at its sole cost and expense, properly, duly and validly record an appropriate memorandum of the Mortgaged Lease and any amendments or supplements thereto in each jurisdiction in which any of the Land may be situated. The Mortgagor shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all Federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

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SECTION 13.2 Further Acts. The Mortgagor shall, at the sole cost

and expense of the Mortgagor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, financing statements, continuation statements, instruments and assurances as the Mortgagee shall from time to time request, which may be necessary in the reasonable judgment of the Mortgagee from time to time to assure, perfect, convey, assign, mortgage, transfer and confirm unto the Mortgagee, the property and rights hereby conveyed or assigned or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee or for carrying out the intention or facilitating the performance of the terms hereof or the filing, registering or recording hereof. Without limiting the generality of the foregoing, in the event that the Mortgagee desires to exercise any remedies, consensual rights or attorney-in-fact powers set forth in this Mortgage and reasonably determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Mortgagee, the Mortgagor agrees to use its best efforts to assist and aid the Mortgagee to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers. In the event the Mortgagor shall fail after demand to execute any instrument or take any action required to be executed or taken by the Mortgagor under this Section 13.2, the Mortgagee may execute or take the

same as the attorney-in-fact for the Mortgagor, such power of attorney being coupled with an interest and is irrevocable.

SECTION 13.3 Additional Security. Without notice to or consent of

the Mortgagor and without impairment of the Lien and rights created by this Mortgage, the Mortgagee may accept (but the Mortgagor shall not be obligated to furnish) from the Mortgagor or from any other Person, additional security for the Secured Obligations. Neither the giving hereof nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, and, second, to the security created by this Mortgage without affecting the Mortgagee's Lien and rights under this Mortgage.

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Covenants To Run with the Land. All of the grants,

covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to, and bind the successors and assigns of, the Mortgagor. If there shall be more than one mortgagor with respect to the Mortgaged Property, the covenants and warranties hereof shall be joint and several.

SECTION 14.2 No Merger. The rights and estate created by this

Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Mortgagee unless the Mortgagee shall have consented to such merger in writing.

SECTION 14.3 Concerning Mortgagee.

(i) The Mortgagee has been appointed as collateral agent pursuant to the Credit Agreement. The actions of the Mortgagee hereunder are subject to the provisions of the Credit Agreement. The Mortgagee shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Mortgaged Property), in accordance with this Mortgage and the Credit

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Agreement. The Mortgagee may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Mortgagee may resign and a successor Mortgagee may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Mortgagee by a successor Mortgagee, that successor Mortgagee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Mortgagee under this Mortgage, and the retiring Mortgagee shall thereupon be discharged from its duties and obligations under this Mortgage. After any retiring Mortgagee's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Mortgagee.

(ii) The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property in its possession if such Mortgaged Property is accorded treatment substantially equivalent to that which the Mortgagee, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Mortgagee nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Mortgaged Property.

(iii) The Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Lender, the Mortgagee shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include the Mortgagee in its individual capacity as a Lender. The Mortgagee may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Mortgagor or any Affiliate of the Mortgagor to the same extent as if the Mortgagee were not acting as collateral agent.

(v) If any portion of the Mortgaged Property also constitutes collateral granted to the Mortgagee under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Mortgagee, in its sole discretion, shall select which provision or provisions shall control.

SECTION 14.4 Mortgagee May Perform; Mortgagee Appointed Attorney-in-

Fact. If the Mortgagor shall fail to perform any covenants contained in this

Mortgage (including, without limitation, the Mortgagor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Mortgagor under any Mortgaged Property) or if any warranty on the part of the Mortgagor contained herein shall be breached, the Mortgagee may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the

Mortgagee shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Mortgagor fails to pay or perform as and when required hereby and which the Mortgagor does not contest in accordance with the provisions of Section 14.5 hereof. Any and all reasonable

amounts so expended by the Mortgagee shall be paid by the Mortgagor in accordance with the provisions

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of Article IX hereof. Neither the provisions of this Section 14.4 nor any action

taken by the Mortgagee pursuant to the provisions of this Section 14.4 shall

prevent any such failure to observe any covenant contained in this Mortgage nor any breach of warranty from constituting an Event of Default. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact, with full authority in the place and stead of the Mortgagor and in the name of the Mortgagor, or otherwise, from time to time in the Mortgagee's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents which the Mortgagee may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 14.5 Expenses The Mortgagor will upon demand pay to the

Mortgagee the amount of any and all reasonable costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Mortgagee may incur in connection with (i) any action, suit or other proceeding affecting the Mortgaged Property or any part thereof commenced, in which action, suit or proceeding the Mortgagee is made a party or participates or in which the right to use the Mortgaged Property or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Mortgagee to defend or uphold the Lien hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Mortgaged Property with any Requirements of Law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Mortgaged Property, (v) the exercise or enforcement of any of the rights of the Mortgagee or any Secured Party hereunder or (vi) the failure by the Mortgagor to perform or observe any of the provisions hereof. All reasonable amounts expended by the Mortgagee and payable by the Mortgagor under this Section 14.5 shall be due upon demand therefor (together

with interest thereon accruing at the Default Rate during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations. The Mortgagor's obligations under this Section 14.5 shall survive the termination hereof and the

discharge of the Mortgagor's other obligations under this Mortgage, the Credit Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

SECTION 14.6 Indemnity.

(i) The Mortgagor agrees to indemnify, pay and hold harmless the Mortgagee and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Mortgagee and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other

liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto), which may be imposed on, incurred by or asserted against that Indemnitee, in any manner relating to or arising out hereof, any Interest Rate Protection Agreement, or any other Loan Document (including, without limitation, any misrepresentation by the Mortgagor in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document) (the "Indemnified

Liabilities"); provided, however, that the Mortgagor shall have no obligation to

an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all appeals and

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the expiration of time to appeal) by a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence, bad faith or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Mortgagor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

(ii) Survival. The obligations of the Mortgagor contained in this

Section 14.6 shall survive the termination hereof and the discharge of the

Mortgagor's other obligations under this Mortgage any Interest Rate Protection Agreement and the other Loan Documents.

(iii) Reimbursement. Any amount paid by any Indemnitee as to which

such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Mortgaged Property.

SECTION 14.7 Continuing Security Interest; Assignment. This

Mortgage shall create a continuing Lien on and security interest in the Mortgaged Property and shall (i) be binding upon the Mortgagor, its respective successors and assigns and (ii) inure, together with the rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and the other Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Loan Party) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Lender may assign or otherwise transfer any indebtedness held by it secured by this Mortgage to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender, herein or otherwise, subject however, to the provisions of the Credit Agreement and any applicable Interest Rate Protection Agreement.

SECTION 14.8 Termination; Release. When all the Secured

Obligations have been paid in full and the Commitments of the Lenders to make any Loan or to issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated, this Mortgage shall terminate. Upon termination hereof or any release of the Mortgaged Property or any portion thereof in accordance with the provisions of the Credit Agreement, the Mortgagee shall, upon the request and at the sole reasonable cost and expense of the Mortgagor, forthwith assign, transfer and deliver to the Mortgagor, against receipt and without recourse to or warranty by the Mortgagee, such of the Mortgaged Property to be released (in the case of a release) as may be in possession of the Mortgagee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

SECTION 14.9 Modification in Writing. No amendment, modification,

supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by the Mortgagee. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Mortgagor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mort-

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gage or any other Loan Document, no notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 14.10 Notices. Unless otherwise provided herein or in the

Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to the Mortgagor or the Mortgagee, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 14.10.

SECTION 14.11 GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY

TRIAL. THIS MORTGAGE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED

IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF MORTGAGED PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. MORTGAGOR AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF

MAIL), POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS SET FORTH IN THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE MORTGAGEE SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY MORTGAGOR REFUSES TO ACCEPT SERVICE, MORTGAGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF MORTGAGEE TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. THE PLEDGORS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 14.12 Severability of Provisions. Any provision hereof

which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 14.13 Limitation on Interest Payable. It is the intention

of the parties to conform strictly to the usury laws, whether state or Federal, that are applicable to the transaction of which this Mortgage is a part. All agreements between the Mortgagor and the Mortgagee whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by the Mortgagor for the use, forbearance or detention of the money to be loaned under the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, or for the payment or performance of any covenant or obligation contained herein or in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any such provision, at the time performance of such provision shall

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be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances the Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to the Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any extension of credit by the Mortgagee shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date hereof until payment in full of the Secured Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 14.14 Business Days. In the event any time period or any

date provided in this Mortgage ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 14.15 Relationship. The relationship of the Mortgagee to

the Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage, any Interest Rate Protection Agreement or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower and mortgagor and mortgagee.

SECTION 14.16 Waiver of Stay.

(i) The Mortgagor agrees that in the event that the Mortgagor or any property or assets of the Mortgagor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or the Mortgagor shall otherwise be a party to any Federal or state bankruptcy, insolvency, moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such law is applicable, then, in any such case, whether or not the Mortgagee has commenced foreclosure proceedings under this Mortgage, the Mortgagee shall be entitled to relief from any such automatic stay as it relates to the exercise of any of the rights and remedies (including, without

limitation, any foreclosure proceedings) available to the Mortgagee as provided in this Mortgage or in any other Security Document.

(ii) The Mortgagee shall have the right to petition or move any court having jurisdiction over any proceeding described in Section 14.16(i) hereof for

the purposes provided therein, and the Mortgagor agrees (i) not to oppose any such petition or motion and (ii) at the Mortgagor's sole cost and expense, to assist and cooperate with the Mortgagee, as may be requested by the Mortgagee from time to time, in obtaining any relief requested by the Mortgagee, including, without limitation, by filing any such petitions, supplemental petitions, requests for relief, documents, instruments or other items from time to time requested by the Mortgagee or any such court.

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SECTION 14.17 No Credit for Payment of Taxes or Impositions. The

Mortgagor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and the Mortgagor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Charge on the Mortgaged Property or any part thereof.

SECTION 14.18 No Claims Against the Mortgagee. Nothing contained

in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 14.19 Obligations Absolute.

All obligations of the Mortgagor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Mortgagor or any other Obligor;

(ii) any lack of validity or enforceability of the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof, any Interest Rate Protection Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 14.9

hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Mortgagor.

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SECTION 14.20 Mortgagee's Right To Sever Indebtedness.

(i) The Mortgagor acknowledges that (A) the Mortgaged Property does not constitute the sole source of security for the payment and performance of the Secured Obligations and that the Secured Obligations are also secured by property of the Mortgagor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (B) the number of such jurisdictions

and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a

separate credit agreement or interest rate protection agreement and (C) the Mortgagor intends that the Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that the Mortgagee would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement, interest rate protection agreement, mortgage or security instrument. In furtherance of such intent, the Mortgagor agrees that the Mortgagee may at any time by notice (an "Allocation Notice") to the

Mortgagor allocate a portion (the "Allocated Indebtedness") of the Secured

Obligations to the Mortgaged Property and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of the Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Protection Agreement, any other Loan Document or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to the Mortgagor and shall not be available hereunder to satisfy any Secured Obligations of the Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien hereof or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by the Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and the Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 14.20, the

proceeds received by the Mortgagee pursuant to this Mortgage shall be applied by the Mortgagee in accordance with the provisions of Section 11.3(iii) hereof.

(ii) The Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien hereof or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because the Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by the Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that the Mortgagee is not entitled to a deficiency judgment, the Mortgagor shall not (A) introduce in any other jurisdiction such judgment as a defense to enforcement against the Mortgagor of any remedy in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document or (B) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 14.20,

including, without limitation, any amendment to this Mort-

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gage, any substitute promissory note or affidavit or certificate of any kind, the Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of the Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

(iv) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 14.20 shall be effective only to the maximum

extent permitted by law.

SECTION 14.21 Mortgaged Lease.

(i) Mortgagor shall punctually and properly perform, observe and otherwise comply with each and every covenant, agreement, requirement and condition set forth in the Mortgaged Lease and do or cause to be done all things necessary or appropriate to keep the Mortgaged Lease in full force and effect and to preserve and keep unimpaired the rights of Mortgagor thereunder. Upon request of Mortgagee, Mortgagor shall, subject to the terms of the Mortgaged Lease, request from Lessor an estoppel certificate, addressed to Mortgagee, stating that there is no default under the Mortgaged Lease, or any state of facts which, with the passage of time or notice or both, would constitute a default thereunder, or if there be any default under the Mortgaged Lease, giving the details thereof.

(ii) In the event Mortgagor acquires the fee simple title or any other estate or interest in the property subject to the Mortgaged Lease, such

acquisition will not merge with the leasehold estate created by the Mortgaged Lease, but such other estate or interest will remain discrete and immediately become subject to the Lien of this Mortgage, and Mortgagor shall execute, acknowledge and deliver any instruments requested by Mortgagee to confirm the coverage of the Lien evidenced hereby upon such other estate or interest. Mortgagor shall pay any and all conveyance or mortgage taxes and filing or similar fees in connection with the execution, delivery, filing or recording of any such instrument.

(iii) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any default (or any event which, with the lapse of time or notice or both, would constitute a default) on the part of or caused by any party to the Mortgaged Lease. If for any reason Mortgagor cannot timely make any payment under the Mortgaged Lease or perform or comply with any of its obligations under the Mortgaged Lease, Mortgagor shall notify Mortgagee in sufficient time to enable Mortgagee (but Mortgagee shall not be obligated) timely to make such payments and/or to perform or comply with such other obligations. On receipt by Mortgagee from Mortgagor pursuant to this subsection 14.21(iii), or from Lessor under the Mortgaged Lease, of any such notice of default by, or inability to make any payment by, Mortgagor thereunder, Mortgagee may rely thereon and, after notice to Mortgagor, take such action as Mortgagee deems necessary or desirable to cure such default, even though the existence of such default or the nature thereof is denied by Mortgagor or by any other person.

(iv) Mortgagor shall not surrender the leasehold estate created by the Mortgaged Lease, or terminate or cancel the Mortgaged Lease. Mortgagor shall not, without the prior written consent of Mortgagee, amend, modify, surrender, impair, forfeit, cancel, or terminate, or permit the amendment, modification, surrender, impairment, forfeiture, cancellation, or termination of the Mortgaged Lease in whole or in part, whether or not a default shall have occurred and shall be continuing under either thereof. Any such termination, cancellation, modification, change, supplement, alteration, amendment or extension without the prior written consent contemplated by this subsection 14.21(iv) shall be void and of no force or effect.

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(v) No release or forbearance of any of Mortgagor's obligations under the Mortgaged Lease, pursuant to the terms thereof, by agreement, operation of law or otherwise, shall release Mortgagor from any of Mortgagor's obligations under this Mortgage, including, without limitation, Mortgagor's obligations with respect to the payment of rent as provided in the Mortgaged Lease and the performance of all of the other terms, provisions, covenants, conditions and agreements contained in the Mortgaged Lease to be performed by Mortgagor thereunder.

(vi) The leasehold estate of Mortgagor created by the Mortgaged Lease and the estate of Lessor under the Mortgaged Lease shall each at all times remain separate and apart and retain their separate identities, and no merger of the leasehold or easement estate of Mortgagor with the estate of Lessor will result with respect to Mortgagee or with respect to any purchaser acquiring the Mortgaged Property at any sale on foreclosure of the Lien of this Mortgage without the written consent of Mortgagee.

(vii) Mortgagor covenants and agrees that the Mortgaged Lease now is and shall at all times be subject in each and every respect to the terms, conditions and Lien of this Mortgage. Mortgagor shall execute, acknowledge and deliver any instruments requested by Mortgagee to confirm the foregoing.

(viii) Mortgagor covenants and agrees that if it shall be the subject of a proceeding under the Federal Bankruptcy Code, it shall not elect to treat the Mortgaged Lease as terminated (pursuant to Section 365 of the Federal Bankruptcy Code or any similar statute or law) without the prior written consent of Mortgagee. Mortgagor hereby irrevocably assigns to Mortgagee the right to exercise such election.

SECTION 14.22 Shortened Redemption Election.

Mortgagor agrees to the provisions of Section 846.103 of the Wisconsin Statutes, or any successor provision, permitting Mortgagee, at its option upon waiving the right to judgment for deficiency, to hold a foreclosure sale of real estate three (3) months after a foreclosure judgment is entered.

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IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed and delivered under seal the day and year first above written.

Applied Power Inc., as Mortgagor

By: _____

Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____,
2000, by [_____] as .[_____] of [_____].

_____(SEAL)
Print Name: _____
Notary Public, _____
State of _____
My commission _____

Schedule A

[Legal Description]

Schedule B

Each of the liens and other encumbrances excepted as being prior to the Lien
hereof as set forth in Schedule B to the marked title insurance commitment

issued by First American Title Insurance Company, dated as of the date hereof
and delivered to Collateral Agent on the date hereof, bearing First American
Title Insurance Company reference number 000700073 relating to the real property
described in Schedule A attached hereto.

Exhibit 1

FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (the
"Agreement") is made and entered into as of the ____ day of _____, 2000 by and
between CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of
Switzerland, acting through its New York branch, as collateral agent, having an
office at Eleven Madison Avenue, New York, New York 10010 (in such capacity,
"Collateral Agent"), and _____, having an office at
_____ ("Tenant").

R E C I T A L S:

A. Tenant is the tenant under a certain lease dated _____,
between _____, as landlord ("Landlord"), and
Tenant, as tenant (as amended through the date hereof, the "Lease"), pursuant to
which Tenant leased a portion (the "Leased Premises") of the property known as
_____, located at _____, as more
particularly described in Schedule A attached hereto (the "Property").

B. Landlord has or will grant a mortgage lien on and security
interest in the Property to Collateral Agent (for its benefit and for the
benefit of the lending institutions from time to time party to that certain
credit agreement dated as of July 31, 2000) pursuant to one or more mortgages,
deeds of trust, deeds to secure debt or similar security instruments
(collectively, the "Security Instruments").

C. Tenant has agreed to subordinate the Lease to the Security
Instruments and to the lien thereof and Collateral Agent has agreed not to
disturb Tenant's possessory rights in the Leased Premises under the Lease on the
terms and conditions hereinafter set forth.

A G R E E M E N T:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth

in the Lease, the Lease and the leasehold estate created thereby and all of
Tenant's rights thereunder are and shall at all times be subject and subordinate
in all respects to the Security Instruments and the lien thereof, and to all
rights of Collateral Agent thereunder, and to any and all advances to be made

thereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof.

2. Nondisturbance. So long as Tenant complies with the provisions of -----

this Agreement, pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Collateral Agent agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the Leased Premises as described in the Lease will not be disturbed during the term of the Lease by reason of a foreclosure. For purposes of

this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instruments, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any -----

Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness.

4. No Liability. Notwithstanding anything to the contrary contained -----

herein or in the Lease, it is specifically understood and agreed that neither the Collateral Agent, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (including Landlord); or

(b) liable for any failure of any prior landlord (including Landlord) to construct any improvements or bound by any covenant to construct any improvement either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space pursuant to any expansion right contained in the Lease; or

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including Landlord); or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord) or by any security deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or

(e) liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property; or

(f) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the written consent of Collateral Agent; or

(g) bound by any consensual or negotiated surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

Notwithstanding the foregoing, Tenant reserves its right to any and all claims or causes of action (i) against such prior landlord for prior losses or damages and (ii) against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

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5. Certain Acknowledgments and Agreements by Tenant. (a) Tenant has -----

notice that the Lease and the rents and all other sums due thereunder have been assigned to Collateral Agent as security for the notes secured by the Security Instruments. In the event Collateral Agent notifies Tenant of the occurrence of a default under the Security Instruments and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Collateral Agent, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Collateral Agent or as otherwise authorized in writing by Collateral Agent. Landlord irrevocably authorizes Tenant to make the foregoing payments to Collateral Agent upon such notice and demand.

(b) Tenant shall send a copy of any and all notices or statements

under the Lease to Collateral Agent at the same time such notices or statements are sent to Landlord.

(c) This Agreement satisfies any and all conditions or requirements in the Lease relating to the granting of a non-disturbance agreement.

6. Collateral Agent to Receive Default Notices. Tenant shall notify

Collateral Agent of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Collateral Agent shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default or, if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. Estoppel. Tenant hereby certifies and represents to Collateral

Agent that as of the date of this Agreement:

(a) the Lease is in full force and effect;

(b) all requirements for the commencement and validity of the Lease have been satisfied and there are no unfulfilled conditions to Tenant's obligations under the Lease;

(c) Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease; to the best of Tenant's knowledge, Landlord is not in default under the Lease; no act, event or condition has occurred which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; no claim by Tenant of any nature exists against Landlord under the Lease; and all obligations of Landlord have been fully performed;

(d) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease;

(e) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one (1) month in advance;

(f) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Leased Premises;

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(g) the Lease has not been modified or amended and constitutes the entire agreement between Landlord and Tenant relating to the Leased Premises;

(h) Tenant has not assigned, mortgaged, sublet, encumbered, conveyed or otherwise transferred any or all of its interest under the Lease; and

(i) Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary action.

8. Notices. All notices or other written communications hereunder

shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the United States Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. Successors. The obligations and rights of the parties pursuant to

this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties; provided, however,

that in the event of the assignment or transfer of the interest of Collateral Agent, all obligations and liabilities of Collateral Agent under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Collateral Agent's interest is assigned or transferred; and provided, further, that the interest of Tenant under this

Agreement may not be assigned or transferred without the prior written consent of Collateral Agent. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different from the Landlord named in the Recitals.

10. Duplicate Original; Counterparts. This Agreement may be executed

in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

11. Limitation of Collateral Agent's Liability. (a) Collateral Agent

shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(b) In the event that Collateral Agent shall acquire title to the Leased Premises or the Property, Collateral Agent shall have no obligation, nor incur any liability, beyond Collateral Agent's then equity interest, if any, in the Leased Premises, and Tenant shall look exclusively to such equity interest of Collateral Agent, if any, in the Leased Premises for the payment and discharge of any obligations imposed

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upon Collateral Agent hereunder or under the Lease, and Collateral Agent is hereby released and relieved of any other obligations hereunder and under the Lease.

12. Modification in Writing. This Agreement may not be modified

except by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Lien of Security Instruments. Nothing contained in this Agreement

shall in any way impair or affect the lien created by the Security Instruments or the provisions thereof.

14. Compliance with Lease. Tenant agrees that in the event there is

any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease, the terms and provisions hereof shall be controlling.

15. Governing Law; Severability. This Agreement shall be governed by

the laws of the State of []. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Further Actions. Tenant agrees at its own expense to execute and

deliver, at any time and from time to time upon the request of Collateral Agent or any Acquiring Party, such documents and instruments (in recordable form, if requested) as may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to fully implement or to further evidence the understandings and agreements contained in this Agreement. Moreover, Tenant hereby irrevocably appoints and constitutes Collateral Agent or any Acquiring Party as its true and lawful attorney-in-fact to execute and deliver any such documents or instruments which may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to implement or further evidence such understandings and agreements and which Tenant, after thirty (30) days' notice from Collateral Agent or any Acquiring Party, has failed to execute and deliver.

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IN WITNESS WHEREOF, Collateral Agent and Tenant have duly executed this Agreement as of the date first above written.

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

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Term Loan & Revolving Credit Leasehold
Mortgage, Assignment of Leases and Rents,
Security Agreement and Fixture Filing
=====

Document No. Document Title
=====

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BY

APW Tools & Supplies, Inc.

Mortgagor,

TO

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent,

Mortgagee

Securing Principal Indebtedness of \$430,000,000

Dated as of July 31, 2000

Relating to Premises in

Milwaukee County, Wisconsin

Recording Area

=====
recording, please

This instrument prepared by and, after
return to:

Athy A. Mobilia, Esq.
Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005

=====
See Exhibit A

9025
=====

Parcel Identification Number (PIN) 160-
=====

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TERM LOAN AND REVOLVING CREDIT LEASEHOLD
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING

TERM LOAN AND REVOLVING CREDIT LEASEHOLD MORTGAGE, ASSIGNMENT OF
LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), dated

as of July 31, 2000, made by APW Tools & Supplies, Inc. a Wisconsin corporation
having an office at 6101 North Baker Road, Glendale, WI, as mortgagor, assignor
and debtor (in such capacities and together with any successors in such
capacities, the "Mortgagor"), in favor of CREDIT SUISSE FIRST BOSTON, a bank

organized under the laws of Switzerland, acting through its New York branch
("CSFB"), having an office at Eleven Madison Avenue, New York, New York 10010,
in its capacity as collateral agent for the lending institutions (the "Lenders")

from time to time party to the Credit Agreement (as hereinafter defined), as
mortgagee, assignee and secured party (CSFB, in such capacities and together
with any successors in such capacities, the "Mortgagee").

R E C I T A L S:

A. Pursuant to that certain credit agreement, dated as of July 31,
2000 (as amended, amended and restated, supplemented or otherwise modified from
time to time, the "Credit Agreement"), among Applied Power Inc. (doing business
as Actuant Corporation), a Wisconsin corporation (the "Borrower"), the Lenders,
CSFB, as swingline lender, an issuing bank, administrative agent and Collateral
Agent, First Union National Bank, as syndication agent and ING (U.S.) Capital
LLC, as documentation agent, the Lenders have agreed to make to or for the
account of the Borrower certain Loans (as hereinafter defined) and to issue
certain Letters of Credit (as hereinafter defined) for the account of the
Borrower.

B. It is contemplated that the Borrower and one or more of the
Subsidiary Guarantors may enter into one or more agreements (collectively, the
"Interest Rate Protection Agreements") with one or more of the Lenders or their
respective Affiliates (as hereinafter defined) fixing the interest rates with
respect to the Loans under the Credit Agreement.

C. The Borrower owns, directly or through its Subsidiaries (as
hereinafter defined), all of the issued and outstanding shares of the Mortgagor.

D. The Mortgagor has, pursuant to a certain subsidiary guarantee
agreement, dated as of July 31, 2000, among other things, guaranteed (the
"Subsidiary Guarantee") the obligations of the Borrower under the Credit
Agreement and the other Loan Documents (as hereinafter defined).

E. The Mortgagor will receive substantial benefits from the
execution, delivery and performance of the Loan Documents and is, therefore,
willing to enter into this Mortgage.

F. Mortgagor is the owner and holder of the tenant's interest under
that certain lease, dated as of February 2, 1995 (as amended from time to time
in accordance with the provisions of this Mortgage, the "Mortgaged Lease"),
between Jerome M. Dorf and Stanley W. Dorf, as landlord (together with its

successors and assigns, "Lessor") and Mortgagor, as tenant, which affects the

property described

on Schedule A annexed hereto. A memorandum of lease relating

to the Mortgaged Lease was recorded on _____ at Book _____, Page _____, in
the real property records of _____.

G. It is a condition to the obligations of the Lenders to make the
Loans under the Credit Agreement and a condition to any Lender issuing Letters
of Credit under the Credit Agreement or entering into any Interest Rate
Protection Agreement that the Mortgagor execute and deliver the applicable Loan
Documents (as hereinafter defined), including this Mortgage.

H. This Mortgage is given by the Mortgagor in favor of the Mortgagee
for its benefit and the benefit of the Lenders (collectively, the "Secured

Parties") to secure the payment and performance of all of the Secured

Obligations (as hereinafter defined).

A G R E E M E N T:

NOW THEREFORE, in consideration of the foregoing premises and other
good and valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, the Mortgagor hereby covenants and agrees with the Mortgagee as
follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. Capitalized terms used but not otherwise

defined herein shall have the meanings assigned to such terms in the Credit
Agreement. The following terms used in this Mortgage shall have the following
meanings:

"ACM" shall have the meaning assigned to such term in Section 4.8(ii)

hereof.

"Affiliates" shall have the meaning assigned to such term in the

Credit Agreement.

"Allocated Indebtedness" shall have the meaning assigned to such term

in Section 14.20(i) hereof.

"Allocation Notice" shall have the meaning assigned to such term in

Section 14.20(i) hereof.

"Alteration" shall mean any and all additions, modifications or

changes, structural or nonstructural.

"Architect's Certificate" shall have the meaning assigned to such term

in Section 10.4(ii) hereof.

"Borrower" shall have the meaning assigned to such term in Recital A

hereof.

"Business Day" shall have the meaning assigned to such term in the

Credit Agreement.

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"Charges" shall mean any and all real estate, property and other

taxes, assessments and special assessments, levies, fees, all water and sewer
rents and charges and all other governmental charges imposed upon or assessed
against, and all claims (including, without limitation, claims for labor,
materials and supplies and other claims arising by operation of law) against,
all or any portions of the Mortgaged Property.

"Collateral" shall have the meaning assigned to such term in Section

14.20(i) hereof.

"Collateral Account" shall have the meaning assigned to such term in

the Security Agreement.

"Commitments" shall have the meaning assigned to such term in the

Credit Agreement.

"Contested Liens" shall mean, collectively, any Liens incurred in

respect of any Charges to the extent that the amounts owing in respect thereof
are not yet delinquent or are being contested and otherwise comply with the
provisions of Section 9.1 hereof; provided, however, that such Liens shall in

all respects be subject and subordinate in priority to the Lien and security
interest created and evidenced by this Mortgage, except if and to the extent
that the law or regulation creating, permitting or authorizing such Lien
provides that such Lien must be superior to the Lien and security interest
created and evidenced hereby.

"Contracts" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all contracts and other general
intangibles relating to the Mortgaged Property and all reserves, deferred
payments, deposits, refunds and claims of every kind, nature or character
relating thereto.

"Cost of Construction" shall mean the sum, so far as it relates to the

reconstructing, renewing, restoring or replacing of the Improvements, of (i)
obligations incurred or assumed by the Mortgagor or undertaken by tenants
pursuant to the terms of the Subleases for labor, materials and other expenses
and to contractors, builders and materialmen, (ii) the cost of contract bonds
and of insurance of every kind, nature or character that would be deemed by a
Prudent Operator to be necessary or appropriate during the course of
construction, (iii) the expenses incurred or assumed by the Mortgagor for test
borings, surveys, estimates, any Plans and Specifications and preliminary
investigations therefor, and for supervising construction, as well as for the
performance of all other duties required by or reasonably necessary for proper
construction, (iv) ad valorem property taxes levied upon the Premises during
performance of any Restoration and (v) any costs or other charges in connection
with obtaining title insurance and counsel opinions that may be required or
necessary in connection with a Restoration.

"Credit Agreement" shall have the meaning assigned to such term in

Recital A hereof.

"Default Rate" shall mean the rate per annum equal to the highest rate

then payable under the Credit Agreement.

"Destruction" shall mean any and all damage to, or loss or destruction

of, the Premises or any part thereof.

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"Environmental Law" shall have the meaning assigned to such term in

the Credit Agreement.

"Estimate" shall have the meaning assigned to such term in Section

10.4(ii) (D) hereof.

"Event of Default" shall have the meaning assigned to such term in the

Credit Agreement.

"Fixture" shall mean all machinery, apparatus, equipment, fittings,

fixtures, improvements and articles of personal property of every kind,
description and nature whatsoever now or hereafter attached or affixed to the
Land or any other Improvement or used in connection with the use and enjoyment
of the Land or any other Improvement or the maintenance or preservation thereof,
which by the nature of their location thereon or attachment thereto are fixtures

under the UCC or any other applicable law including, without limitation, all utility systems, fire sprinkler and security systems, drainage facilities, lighting facilities, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, pipes, fittings and other items of every kind and description now or hereafter attached to or located on the Land which by the nature of their location thereon or attachment thereto are real property under applicable law, HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, water or lighting systems, power, sanitation, waste removal, elevators, maintenance or other systems or equipment.

"Full Replacement Cost" shall mean the Cost of Construction to replace

the Improvements, exclusive of depreciation, excavation, foundation and footings, as determined from time to time (but not less frequently than would be determined by a Prudent Operator or as otherwise requested by the Mortgagee) by a Person selected by the Mortgagor and reasonably acceptable to the Mortgagee.

"GAAP" shall have the meaning assigned to such term in the Credit

Agreement.

"Governmental Authority" shall mean any Federal, state, local, foreign

or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board, bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court, tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Mortgagor or the Mortgaged Property or any portion thereof.

"Hazardous Materials" shall have the meaning assigned to such term in

the Credit Agreement.

"Improvements" shall mean all buildings, structures and other

improvements of every kind or description and any and all Alterations now or hereafter located, attached or erected on the Land including, without limitation (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements im-

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mediately upon delivery thereof on the Land and to be part of the improvements immediately upon their incorporation therein.

"Indemnified Liabilities" shall have the meaning assigned to such term

in Section 14.6(i) hereof.

"Indemnitees" shall have the meaning assigned to such term in Section

14.6(i) hereof.

"Insurance Certificate" shall mean a certificate evidencing the

Insurance Requirements (i) in substantially the form commonly known as "ACORD 27" that (A) provides that the insurance has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the Insurance Policies, (B) provides an unequivocal obligation to give notice in advance to additional interest parties of termination and notification in advance of changes and (C) purports to convey all the privileges of the Insurance Policies to the certificate holders and (ii) that otherwise complies with the requirements with respect thereto set forth in Article VIII hereof.

"Insurance Policies" means the insurance policies and coverages

required to be maintained by the Mortgagor with respect to the Mortgaged Property pursuant to Article VIII hereof and all renewals and extensions

thereof.

"Insurance Requirements" means, collectively, all provisions of the

Insurance Policies, all requirements of the issuer of any of the Insurance

Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon the Mortgagor and applicable to the Mortgaged Property or any use or condition thereof.

"Interest Rate Protection Agreements" shall have the meaning assigned

to such term in Recital B hereof.

"Land" shall mean the tenant's interest and estate in the Mortgaged

Lease and in all recorded and unrecorded extensions, amendments, supplements and restatements thereof, together with all right, title and interest of the tenant under the Mortgaged Lease in the land described in Schedule A annexed to this

Mortgage, together with all of the Mortgagor's reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way demised under the Mortgaged Lease or belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way demised under the Mortgaged Lease or belong, relate or be appurtenant thereto.

"Landlord" shall mean any landlord, lessor, franchisor, licensor or

grantor, as applicable.

"Lenders" shall have the meaning assigned to such term in the Preamble

hereof.

"Letters of Credit" shall have the meaning assigned to such term in

the Credit Agreement.

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"Liability Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (ii) and, to the extent applicable, (vi) and (vii) of Section 8.1 hereof.

"Lien" shall have the meaning assigned to such term in the Credit

Agreement.

"Loan Documents" shall have the meaning assigned to such term in the

Credit Agreement.

"Loan Parties" shall have the meaning assigned to such term in the

Credit Agreement.

"Loans" shall have the meaning assigned to such term in the Credit

Agreement.

"Material Adverse Effect" shall mean (a) a materially adverse effect

on the business, property, results of operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Mortgagor to perform any of its obligations under this Mortgage or (c) material impairment of the rights of or benefits or remedies available to the Mortgagee under this Mortgage including, without limitation, any material impairment of the value or utility of the Mortgaged Property or the Lien of this Mortgage.

"Mortgage" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgaged Lease" shall have the meaning assigned to such term in

Recital F hereof.

"Mortgaged Property" shall have the meaning assigned to such term in

Section 2.1 hereof.

"Mortgagee" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor's Interest" shall have the meaning assigned to such term in

Section 2.2 hereof.

"Net Cash Proceeds" shall have the meaning assigned to such term in

the Credit Agreement.

"Net Condemnation Award" shall have the meaning assigned to such term

in Section 10.2 hereof.

"Net Insurance Proceeds" shall have the meaning assigned to such term

in Section 10.1 hereof.

"Officers' Certificate" shall mean, as applied to any corporation, a

certificate executed on behalf of such corporation by its Chairman of the Board
(if an officer) or its Chief Executive Officer or one of its Vice Presidents (or
an equivalent officer) and by its Chief Financial Officer, Vice President-
Finance or its Treasurer (or an equivalent officer) or any Assistant Treasurer
in their official (and not individual) capacities; provided, however, that every

Officers' Certificate with respect to the compliance with

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a condition precedent to the making of any Loan or the taking of any other
action hereunder shall include (i) a statement that the officers making or
giving such Officers' Certificate have read such condition and any definitions
or other provisions contained in this Agreement relating thereto, and (ii) a
statement as to whether, in the opinion of the signers, such condition has been
complied with.

"Permit" shall mean any and all permits, certificates, approvals,

authorizations, consents, licenses, variances, franchises or other instruments,
however characterized, of any Governmental Authority (or any Person acting on
behalf of a Governmental Authority) now or hereafter acquired or held, together
with all amendments, modifications, extensions, renewals and replacements of any
thereof issued or in any way furnished in connection with the Mortgaged Property
including, without limitation, building permits, certificates of occupancy,
environmental certificates, industrial permits or licenses and certificates of
operation.

"Permitted Collateral Liens" shall have the meaning assigned to such

term in Section 4.7(v) hereof.

"Permitted Liens" shall have the meaning assigned to such term in the

Credit Agreement.

"Person" shall have the meaning assigned to such term in the Credit

Agreement.

"Plans and Specifications" shall have the meaning assigned to such

term in Section 10.4(i) hereof.

"Premises" shall mean, collectively, the Land and the Improvements.

"Prior Liens" shall mean, collectively, the Liens identified in

Schedule B annexed to this Mortgage.

"Proceeds" shall mean, collectively, any and all (i) proceeds of the

conversion, voluntary or involuntary, of any of the Mortgaged Property or any portion thereof into cash or liquidated claims, (ii) proceeds of any insurance (except payments made to a Person which is not a party to this Mortgage), indemnity, warranty, guaranty or claim payable to the Mortgagee or to the Mortgagor from time to time with respect to any of the Mortgaged Property including, without limitation, all Net Insurance Proceeds, (iii) payments (in any form whatsoever) made or due and payable to the Mortgagor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any portion of the Mortgaged Property by any Governmental Authority (or any Person acting on behalf of a Governmental Authority) including, without limitation, all Net Condemnation Awards, (iv) products of the Mortgaged Property and (v) other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property including, without limitation, refunds of real estate taxes and assessments, including interest thereon.

"Property Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (i), (iii), (iv), (v) and, to the extent applicable, (vii) of Section 8.1 hereof.

"Prudent Operator" shall mean a prudent operator of property similar

in use and configuration to the Premises and located in the locality where the Premises are located.

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"Real Property Officers' Certificate" shall mean the Officers'

Certificate delivered pursuant to Section [4.02(h)(12)] of the Credit Agreement.

"Records" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the Mortgaged Property or the construction of any Alteration or the maintenance of any Permit.

"Remedial Action " shall have the meaning assigned to such term in the

Credit Agreement.

"Rental Value" shall mean the sum of (x) the total estimated gross

rental income from tenant occupation of the Improvements as furnished and equipped under Subleases and (y) the total amount of all other Charges which are the legal obligation of the Tenants of the Premises under Subleases.

"Rents" shall mean, collectively, any and all rents, additional rents,

royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Sublease to secure performance of the Tenant's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Sublease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Sublease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Mortgagor under any Sublease or otherwise, and any award in the event of the bankruptcy of any Tenant under or guarantor of a Sublease.

"Requirements of Law" shall mean, collectively, any and all

requirements of any Governmental Authority including, without limitation, any and all orders, decrees, determinations, laws, treaties, ordinances, rules, regulations or similar statutes or case law.

"Restoration" shall have the meaning assigned to such term in Section

10.3 hereof.

"Restoration Commitment" shall have the meaning assigned to such term

in Section 10.4(iii) hereof.

"Restoration Election Notice" shall have the meaning assigned to such

term in Section 10.3 hereof.

"Restoration Letter of Credit" shall have the meaning assigned to such

term in Section 10.4(iii) hereof.

"Secured Obligations" shall mean all obligations (whether or not

constituting future advances, obligatory or otherwise) of the Borrower and any
and all of the other Loan Parties from time to time arising under or in respect
hereof, the Credit Agreement, the Interest Rate Protection Agreements and the
other Loan Documents (including, without limitation, the obligations to pay
principal, interest and all other charges, fees, expenses, commissions,
reimbursements, premiums, indemnities and other payments related to or in
respect of the obligations contained in this Mortgage, the Credit Agreement, the
Interest

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Rate Protection Agreements and the other Loan Documents), in each case whether
(i) such obligations are direct or indirect, secured or unsecured, joint or
several, absolute or contingent, due or to become due whether at stated
maturity, by acceleration or otherwise, (ii) arising in the regular course of
business or otherwise, (iii) for payment or performance and/or (iv) now existing
or hereafter arising (including, without limitation, interest and other
obligations arising or accruing after the commencement of any bankruptcy,
insolvency, reorganization or similar proceeding with respect to any Loan Party
or any other Person, or which would have arisen or accrued but for the
commencement of such proceeding, even if such obligation or the claim therefor
is not enforceable or allowable in such proceeding).

"Secured Parties" shall have the meaning assigned to such term in

Recital [I] hereof.

"Security Agreement" shall have the meaning assigned to such term in

the Credit Agreement.

"Security Documents" shall have the meaning assigned to such term in

the Credit Agreement.

"Subleases" shall mean, collectively, any and all interests of the

Mortgagor, as Landlord, in all leases and subleases of space, tenancies,
franchise agreements, licenses, occupancy or concession agreements now existing
or hereafter entered into, whether or not of record, relating in any manner to
the Premises and any and all amendments, modifications, supplements,
replacements, extensions and renewals if any thereof, whether now in effect or
hereafter coming into effect.

"Subordination Agreement" shall mean a subordination, nondisturbance

and attornment agreement substantially in the form of Exhibit 1 annexed to this

Mortgage.

"Subsidiaries" shall have the meaning assigned to such term in the

Credit Agreement.

"Subsidiary Guarantee" shall have the meaning assigned to such term in

Recital [D] hereof.

"Subsidiary Guarantors" shall have the meaning assigned to such term

in the Credit Agreement.

"Taking" shall mean any taking of the Mortgaged Property or any part

thereof, in or by condemnation or other eminent domain proceedings pursuant to
any law, general or special, or by reason of the temporary requisition of the
use or occupancy of the Mortgaged Property or any part thereof, by any
Governmental Authority, civil or military.

"Tax Escrow Fund" shall have the meaning assigned to such term in

Section 7.2 hereof.

"Tenant" shall mean any tenant, lessee, sublessee, franchisee,

licensee, grantee or obligee, as applicable.

"UCC" shall mean the Uniform Commercial Code as in effect on the date

hereof in the jurisdiction in which the Premises are located; provided, however,

that if by reason of mandatory provi-

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sions of law, the perfection or the effect of perfection or non-perfection of the security interest in any item or portion of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the jurisdiction in which the Premises are located, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

SECTION 1.2 Interpretation. In this Mortgage, unless otherwise

specified, (i) singular words include the plural and plural words include the singular, (ii) words importing any gender include the other gender, (iii) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors, administrators and personal representatives, (iv) references to any statute or other law include all applicable rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, consolidating or replacing the statute or law referred to, (v) the words "consent," "approve" and "agree," and derivations thereof or words of similar import, mean the prior written consent, approval or agreement of the Person in question, (vi) the words "include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation," (vii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import, refer to this Mortgage in its entirety, (viii) references to Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are to the Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses hereof, (ix) the Schedules and Exhibits to this Mortgage, in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, are incorporated herein by reference, (x) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience only and shall not affect the constructions of any provisions hereof and (xi) all obligations of the Mortgagor hereunder shall be satisfied by the Mortgagor at the Mortgagor's sole cost and expense.

SECTION 1.3 Resolution of Drafting Ambiguities. The Mortgagor

acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., Mortgagee) shall not be employed in the interpretation

hereof.

ARTICLE II

GRANTS AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Mortgaged Property. The Mortgagor hereby

grants, mortgages, bargains, sells, assigns and conveys to the Mortgagee, and hereby grants to the Mortgagee, a mortgage lien and security interest in and upon, all of the Mortgagor's estate, right, title and interest in, to and under the following property, whether now owned or held or hereafter acquired from time to time (collectively, the "Mortgaged Property"):

- (i) Land;
- (ii) Improvements;
- (iii) Subleases;
- (iv) Rents;
- (v) Permits;
- (vi) Contracts;
- (vii) Records; and

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(viii) Proceeds;

TO HAVE AND TO HOLD the Mortgaged Property, together with all estate, right, title and interest of the Mortgagor and anyone claiming by, through or under the Mortgagor in and to the Mortgaged Property and all rights and appurtenances relating thereto, unto the Mortgagee, its successors and assigns, for the purpose of securing the payment and performance in full of all the Secured Obligations.

SECTION 2.2 Assignment of Subleases and Rents. As additional

security for the payment and performance in full of all the Secured Obligations and subject to the provisions of Article VI hereof, the Mortgagor absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to the Mortgagee, and grants to the Mortgagee, all of the Mortgagor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Subleases including, without limitation, the following (such assigned rights, the "Mortgagor's Interest"):

(i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Subleases;

(ii) all claims, rights, powers, privileges and remedies of the Mortgagor, whether provided for in the Subleases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants to perform or comply with any term of the Subleases;

(iii) all rights to take all actions upon the happening of a default under the Subleases as shall be permitted by the Subleases or by law including, without limitation, the commencement, conduct and consummation of proceeding at law or in equity; and

(iv) the full power and authority, in the name of the Mortgagor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Mortgagor, as Landlord, is or may be entitled to take under the Subleases.

SECTION 2.3 Secured Obligations. This Mortgage secures, and the

Mortgaged Property is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.4 Future Advances. This Mortgage shall secure future

advances. The maximum aggregate amount of all advances of principal under the Credit Agreement (which advances are obligatory to the extent the conditions set forth in the Credit Agreement relating thereto are satisfied) that may be outstanding hereunder at any time is \$430,000,000, plus interest thereon, collection costs, sums

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advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Mortgagee by reason of any default by the Mortgagor under the terms hereof, together with all other sums secured hereby.

SECTION 2.5 No Release. Nothing set forth in this Mortgage shall

relieve the Mortgagor from the performance of any term, covenant, condition or agreement on the Mortgagor's part to be performed or observed under or in respect of any of the Mortgaged Property or from any liability to any Person under or in respect of any of the Mortgaged Property or shall impose any obligation on the Mortgagee or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Mortgagor's part to be so performed or observed or shall impose any liability on the Mortgagee or any other Secured Party for any act or omission on the part of the Mortgagor relating thereto or for any breach of any representation or warranty on the part of the Mortgagor contained in this Mortgage, any Interest Rate Protection Agreement, or any other Loan Document, or under or in respect of the Mortgaged Property or made in connection herewith or therewith. The obligations of the Mortgagor contained in this Section 2.5 shall survive the termination hereof and

the discharge of the Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

SECTION 3.1 Authority and Validity.

The Mortgagor represents and warrants that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(ii) it is duly qualified to transact business and is in good standing in the state in which the Mortgaged Property is located;

(iii) it has full organizational power and lawful authority to execute and deliver this Mortgage and to mortgage and grant a Lien on and security interest in the Mortgaged Property and otherwise assign the Mortgagor's Interest and otherwise perform its obligations as contemplated herein, and all corporate and governmental actions, consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained; and

(iv) this Mortgage is a legal, valid and binding obligation of the Mortgagor, enforceable against the Mortgagor in accordance with its terms.

SECTION 3.2 Warranty of Title. The Mortgagor represents and warrants

that:

(i) it owns the tenant's interest in the Mortgaged Lease and has good and marketable title to the Premises and the Landlord's interest and estate under or in respect of the Subleases and

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good title to the interest it purports to own or hold in and to each of the Permits, the Contracts and the Records, in each case subject to no Liens, except for Prior Liens;

(ii) (a) the Mortgaged Lease is a valid and subsisting lease, superior and paramount to all other leases respecting the property to which such Mortgaged Lease relates, (b) the Mortgaged Lease is in full force and effect and no default (nor any event which, with notice or lapse of time or both, would constitute such a default) has occurred or is continuing under the Mortgaged Lease and (c) the Mortgaged Lease is not subject to any defenses, offsets or counterclaims and there have been no renewals or extensions of or supplements, modifications or amendments to the Mortgaged Lease not previously disclosed to Mortgagee;

(iii) with respect to each Sublease relating to the Mortgaged Property, each such Sublease is in full force and effect and no default (nor any event which, with notice or lapse of time or both, would constitute such a default) has occurred or is continuing thereunder;

(iv) it is in actual possession of the Premises;

(v) it has good title to the interest it purports to own or hold in and to all rights and appurtenances to or that constitute a portion of the Mortgaged Property;

(vi) it is in compliance with each term, condition and provision of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property; and

(vii) this Mortgage creates and constitutes a valid and enforceable first priority Lien on the Mortgaged Property, and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Fixtures, which first priority Lien and first priority security interest are subject only to Prior Liens.

SECTION 3.3 Condition of Mortgaged Property. The Mortgagor

represents and warrants that:

(i) there has been issued and there remains in full force and effect subject to no revocation, suspension, forfeiture or modification, each and every Permit necessary for the present and contemplated use, operation and occupancy of the Premises by the Mortgagor and its Tenants and the conduct of their respective businesses and all required zoning, building code, land use, environmental and other similar Permits, except to the extent that such failure, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) the Premises and the present and contemplated use and occupancy thereof comply with all applicable zoning ordinances, building codes, land use laws, set back or other development and use requirements of Governmental Authorities, except to the extent that such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) the Premises are served by all utilities (including, without limitation, public water and sewer systems) necessary for the present and contemplated use thereof, and all utility services are provided by public utilities and the Premises have accepted or are equipped to accept such utility services and the Mortgagor has not received notice of termination of such utility service;

(iv) all public roads and streets necessary for service of and access to the Premises for the present and contemplated use thereof have been completed and have been dedicated and accepted as such by the appropriate Governmental Authorities;

(v) the Mortgagor has access to the Premises from public roads and, to the extent applicable, public or private rail or waterway, sufficient to allow the Mortgagor and its Tenants and invitees to conduct their respective businesses at the Premises in accordance with sound commercial practices and the Mortgagor has not received notice of termination of such access;

(vi) the Mortgagor has not received notice of any Taking or the commencement or pendency of any action or proceeding therefor;

(vii) there has not occurred any Destruction of the Premises or any portion thereof as a result of any fire or other casualty, which as of the date hereof has not been restored;

(viii) there are no disputes regarding boundary lines, location, encroachments or possession of any portions of the Mortgaged Property and, to the best knowledge of Mortgagor after due and diligent inquiry, no state of facts exists which could give rise to any such claim;

(ix) all liquid and solid waste disposal, septic and sewer systems located on the Premises are in a good and safe condition and repair and in compliance with all Requirements of Law, except to the extent that such noncompliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(x) no portion of the Premises is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Premises is located within such area, the Mortgagor has obtained the insurance prescribed in Article VIII hereof;

(xi) the Premises are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a portion of such lot or lots, and no other land or improvements is assessed and taxed together with the Premises or any portion thereof; and

(xii) there are no options or rights of first refusal to purchase or acquire all or any portion of the Mortgaged Property.

SECTION 3.4 Subleases. The Mortgagor represents and warrants

that:

(i) the Subleases identified in the Real Property Officers' Certificate are the only Subleases in existence on the date hereof with respect to the Premises;

(ii) true copies of such Subleases have been previously delivered to the Mortgagee and there are no agreements with any Tenant under such Subleases other than those agreements expressly set forth therein;

(iii) the Mortgagor is the sole owner of all of the Mortgagor's Interest in such Subleases;

(iv) each of such Subleases is in full force and effect, constitutes a legal, valid and binding obligation of the Mortgagor and the applicable Tenant thereunder, and is enforceable against the Mortgagor and such Tenant in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws of general application affecting the enforcement of creditor's rights;

(v) there is no default by Mortgagor or, to the best of Mortgagor's knowledge, by any Tenant, under any of such Subleases and there is existing no condition which with the giving of notice or passage of time or both would cause a default thereunder;

(vi) all Rents due under such Subleases have been paid in full;

(vii) none of the Rents reserved under such Subleases have been assigned or otherwise pledged or hypothecated except in favor of the Mortgagee pursuant to the provisions hereof;

(viii) none of the Rents (other than any security deposit collected in accordance with the provisions of the applicable Sublease) have been collected for more than one (1) month in advance;

(ix) there exists no offsets or defenses to the payment of any portion of the Rents and the Mortgagor owes no monetary obligation to any Tenant under any such Sublease;

(x) the Mortgagor has received no notice from any Tenant challenging the validity or enforceability of any such Sublease;

(xi) no such Sublease contains any option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; and

(xii) each such Sublease is subordinate to this Mortgage either pursuant to its terms or pursuant to a recordable Subordination Agreement.

SECTION 3.5 Insurance. The Mortgagor represents and warrants

that (i) the Premises and the use, occupancy and operation thereof comply in all material respects with all Insurance Requirements and, to the best knowledge of the Mortgagor after due and diligent inquiry, there exists no default under any Insurance Requirement which could reasonably be expected to have a Material Adverse Effect, (ii) all premiums due and payable with respect to the Insurance Policies have been paid and (iii) all Insurance Policies are in full force and effect and the Mortgagor has not received notice of violation or cancellation thereof.

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SECTION 3.6 Charges. The Mortgagor represents and warrants that

all Charges imposed upon or assessed against the Mortgaged Property have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable.

SECTION 3.7 Environmental. Except as set forth in Schedule 3.17 to

the Credit Agreement, the Mortgagor represents and warrants that:

(i) it has obtained all Permits which are necessary with respect to the ownership and operation of its business and the Mortgaged Property under any and all applicable Environmental Laws and is in compliance with all terms and conditions thereof, except to the extent that such noncompliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) it is in compliance with any and all applicable Environmental Laws including, without limitation, all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws, except to the extent that such noncompliance, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice of demand letter pending or threatened against it or any Affiliate under the Environmental Laws which could result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect; and

(iv) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance with the Environmental Laws, or which could reasonably be expected to give rise to any common law or legal liability including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other Environmental Law or related common law theory or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing or notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials which could reasonably be expected to result in a fine, penalty or other cost or expense, which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.8 No Conflicts, Consents, etc. Neither the execution and

delivery hereof by the Mortgagor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Mortgagor is a party, or by which it may be bound or to which any of its properties or assets may be subject, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (ii) conflicts with any Requirement of Law applicable to the Mortgagor or its property or (iii) results in or requires the creation or imposition of any Lien (other than the Lien contemplated hereby) upon or with respect to any of the Mortgaged Property. No consent of any party (including, without limitation, equityholders or creditors of the Mortgagor) and no consent,

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authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required for (i) the granting of a mortgage Lien on and security interest in the Mortgaged Property by the Mortgagor granted by it pursuant to this Mortgage or for the execution, delivery or performance hereof by the Mortgagor except as set forth in the Real Property Officers' Certificate, except for applicable recording and filing requirements, or (ii) the exercise by the Mortgagee of the remedies in respect of the Mortgaged Property pursuant to this Mortgage.

ARTICLE IV

CERTAIN COVENANTS OF MORTGAGOR

SECTION 4.1 Payment. The Mortgagor shall pay as and when the same

shall become due, whether at its stated maturity, by acceleration or otherwise, each and every amount payable by the Mortgagor under the Loan Documents and any Interest Rate Protection Agreements.

SECTION 4.2 Preservation of Corporate Existence. The Mortgagor

shall:

(i) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization;

(ii) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Mortgaged Property is located; and

(iii) preserve and maintain in full force and effect all consents, authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof.

SECTION 4.3 Title. The Mortgagor shall:

(i) (A) keep in effect all rights and appurtenances to or that constitute a part of the Mortgaged Property and (B) protect, preserve and defend its interest in the Mortgaged Property and title thereto;

(ii) (A) comply with each of the terms, conditions and provisions of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property, (B) forever warrant and defend to the Mortgagee the Lien and security interests created and evidenced hereby and the validity and priority hereof in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Mortgaged Property or any of the rights of the Mortgagee hereunder and (C) maintain a valid and enforceable first priority Lien on the Mortgaged Property and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Mortgaged Property, which first priority Lien and security interest shall be subject only to Permitted Collateral Liens; and

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(iii) immediately upon obtaining knowledge of the pendency of any proceedings for the eviction of the Mortgagor from the Mortgaged Property or any part thereof by paramount title or otherwise questioning the Mortgagor's right, title and interest in, to and under the Mortgaged Property as warranted in this Mortgage, or of any condition that could give rise to any such proceedings, notify the Mortgagee thereof. The Mortgagee may participate in such proceedings and the Mortgagor will deliver or cause to be delivered to the Mortgagee all instruments requested by the Mortgagee to permit such participation. In any such proceedings, the Mortgagee may be represented by counsel selected by Mortgagor reasonably satisfactory to the Mortgagee at the expense of the Mortgagor. If, upon the resolution of such proceedings, the Mortgagor shall suffer a loss of the Mortgaged

Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to the Mortgagee to be applied as Net Cash Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section [2.13(g)] of the Credit Agreement.

SECTION 4.4 Maintenance and Use of Mortgaged Property; Alterations.

(i) Maintenance. The Mortgagor shall cause the representations and warranties set forth in Section 3.3 hereof to continue to be true in each and every respect and shall pay or cause to be paid when due all Charges, costs and expenses relating thereto.

(ii) Maintenance of Premises. The Mortgagor shall not commit or suffer any waste on the Premises. The Mortgagor shall, at all times, maintain the Premises in good, safe and insurable operating order, condition and repair, reasonable wear and tear excepted, and shall as quickly as practicable make or cause to be made all repairs, structural or nonstructural, which are necessary or appropriate in the conduct of the Mortgagor's business. The Mortgagor shall (A) not, except as permitted in Section 4.4(iii) hereof, alter the occupancy or use of all or any portion of the Premises without the prior written consent of the Mortgagee and (B) take all other actions which from the character or use of the Premises may be necessary or appropriate to maintain and preserve its value. Except to the extent permitted pursuant to the provisions of Section 4.4(iii) hereof, the Mortgagor shall not remove, demolish or alter the design or structural character of any Improvement now or hereafter erected upon all or any portion of the Premises, or permit any such removal, demolition or alteration, without the prior written consent of the Mortgagee.

(iii) Alterations. The Mortgagor shall not, without the prior written consent of the Mortgagee (which consent shall not be unreasonably withheld) and the consent of Lessor, if any, as may be required under the Mortgaged Lease, make any Alteration to the Premises that, in each instance, costs more to effect than \$250,000 or which, during any calendar year, in the aggregate, cost more than \$1,000,000 to effect. No prior written consent of the Mortgagee shall be required for any Alteration to the Premises that, in each instance, costs less than \$250,000 to effect or which, during any calendar year, in the aggregate, do not cost more than \$1,000,000 to effect. Whether or not the making of any Alteration shall require the consent of the Mortgagee pursuant to the immediately preceding sentence, the Mortgagor shall (A) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements and (B) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of Article X hereof.

(iv) Permits. The Mortgagor shall maintain, or cause to be maintained, in full force and effect all Permits contemplated by Section 3.3(i) hereof. Unless and to the extent contested by the Mortgagor in accordance with the provisions of Article X hereof, the Mortgagor shall comply with all requirements set forth in the Permits and all Requirements of Law applicable to all or any portion of the Mortgaged Property or the condition, use or occupancy of all or any portion thereof or any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force.

(v) Zoning. The Mortgagor shall not initiate, join in, or consent to any change in the zoning or any other permitted use classification of the Premises without the prior written consent of the Mortgagee.

SECTION 4.5 Notices Regarding Certain Defaults. The Mortgagor

shall, promptly upon receipt of any written notice regarding (i) any default by the Mortgagor relating to the Mortgaged Property or any portion thereof or (ii) the failure to discharge any of Mortgagor's obligations with respect to the Mortgaged Property or any portion thereof described herein, furnish a copy of such notice to the Mortgagee.

SECTION 4.6 Access to Mortgaged Property, Books and Records; Other

Information. Upon reasonable prior notice and request to the Mortgagor, the

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Mortgagee, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours and such other reasonable time as may be reasonably requested by the Mortgagee to all of the Mortgaged Property including, without limitation, all of the books, correspondence and records of the Mortgagor relating thereto. The Mortgagee and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Mortgagor agrees to render to the Mortgagee at the Mortgagor's cost and expense, such clerical and other assistance as may be requested by the Mortgagee with regard thereto. The Mortgagor shall, at any and all times, within a reasonable time after written request by the Mortgagee, furnish or cause to be furnished to the Mortgagee, in such manner and in such detail as may be reasonably requested by the Mortgagee, additional information with respect to the Mortgaged Property.

SECTION 4.7 Limitation on Liens; Transfer Restrictions. Except as

permitted pursuant to the credit Agreement, the Mortgagor may not, without the prior written consent of the Mortgagee and the consent of Lessor, if any, as may be required under the Mortgaged Lease, further mortgage, encumber, hypothecate, sell, convey or assign all or any part of the Mortgaged Property or suffer or allow any of the foregoing to occur by operation of law or otherwise; provided,

however, that so long as no Event of Default shall have occurred and be

continuing, the Mortgagor shall have the right, subject to any provision in the Mortgaged Lease, to suffer to exist the following Liens in respect of the Mortgaged Property: (i) Prior Liens (but not extensions, amendments, supplements or replacements of Prior Liens unless consented to by the Mortgagee), (ii) the Lien and security interest created by this Mortgage, (iii) Contested Liens, (iv) Liens of the kind and nature described in clause (f) of the definition of Permitted Liens and (v) Subleases to the extent permitted pursuant to the provisions of Article V hereof (the Liens described in clauses (i) through (v)

of this sentence, collectively, "Permitted Collateral Liens").

SECTION 4.8 Environmental.

(i) Hazardous Materials. The Mortgagor shall (A) comply with any and

all present and future Environmental Laws except where the failure to comply could not reasonably be expected to have a

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Material Adverse Effect, (B) not release, store, treat, handle, generate, discharge or dispose of any Hazardous Materials on, under or from the Mortgaged Property in violation of (which violation could reasonably be expected to have a Material Adverse Effect) or in a manner that could result in any material liability under any present and future Environmental Law and (C) take all necessary steps to initiate and expeditiously complete all remedial, corrective and other action to eliminate any such effect, provided, however, that Mortgagor

shall not be required to undertake any Remedial Action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP. In the event the Mortgagor fails to comply with the covenants in the preceding sentence, the Mortgagee may, in addition to any other remedies set forth herein, as agent for and at the Mortgagor's sole cost and expense, cause any necessary remediation, removal or response action relating to Hazardous Materials to be taken to achieve compliance with such covenants and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and shall bear interest at the Default Rate. The Mortgagee shall have the right to have an environmental report prepared as provided in Section 5.10 of the Credit

Agreement. The Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage or expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain by reason of the assertion against the Mortgagee or such Lender by any party of any claim relating to such Hazardous Materials referred to in clause (i) (B) of this Section 4.8 on, under or from the Mortgaged Property or actions

taken with respect thereto as authorized hereunder. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof; and

(ii) Asbestos. The Mortgagor shall not install nor permit to be

installed in or removed from the Mortgaged Property, asbestos or any asbestos-

containing material (collectively, "ACM") except in compliance with all

applicable Environmental Laws, and with respect to any ACM currently present in the Mortgaged Property, the Mortgagor shall promptly either (A) remove any ACM which such Environmental Laws require to be removed or (B) otherwise comply with such Environmental Laws with respect to such ACM, all at the Mortgagor's sole cost and expense. If the Mortgagor shall fail so to remove any ACM or otherwise comply with such laws or regulations, the Mortgagee may, in addition to any other remedies set forth herein, take reasonable or necessary steps to eliminate such ACM from the Mortgaged Property or otherwise comply with applicable law, regulations or orders and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and bear interest at the Default Rate. The Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain, by reason of the assertion against the Mortgagee or such Lender by any third party of a claim as a result of the presence of any ACM and any removal thereof to the extent required by applicable Environmental Laws or compliance with all applicable Environmental Laws. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof.

SECTION 4.9 Estoppel Certificates. The Mortgagor shall, from time

to time, upon ten (10) Business Days' prior written request of the Mortgagee, execute, acknowledge and deliver to the

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Mortgagee an Officers' Certificate stating that this Mortgage, the Credit Agreement, each Interest Rate Protection Agreement, and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Mortgage, the Credit Agreement, such Interest Rate Protection Agreement or such other Loan Document, as applicable, is in full force and effect as modified and setting forth such modifications) and stating the date to which principal and interest have been paid on the Loans.

ARTICLE V

SUBLEASES

SECTION 5.1 Mortgagor's Affirmative Covenants with Respect to

Subleases. With respect to each Sublease, the Mortgagor shall:

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- (i) observe and perform all the obligations imposed upon the Landlord under such Subleases;
- (ii) promptly send copies to the Mortgagee of all notices of default which the Mortgagor shall send or receive thereunder; and
- (iii) enforce, in a commercially reasonable manner, all of the material terms, covenants and conditions contained in such Sublease upon the part of the Tenant thereunder to be observed or performed.

SECTION 5.2 Mortgagor's Negative Covenants with Respect to Subleases.

With respect to each Sublease, the Mortgagor shall not, without the prior written consent of the Mortgagee:

- (i) receive or collect, or permit the receipt or collection of, any Rent under such Sublease more than one (1) month in advance of the respective period in respect of which such Rent is to accrue, except:
 - (A) in connection with the execution and delivery of such Sublease (or of any amendment to such Sublease), Rent thereunder may be collected and received in advance in an amount not in excess of one (1) month's Rent;
 - (B) the amount held by Landlord as a reasonable security deposit thereunder; and
 - (C) any amount received and collected for escalation and other charges in accordance with the terms of such Sublease;
- (ii) assign, transfer or hypothecate (other than to the Mortgagee hereunder) any Rent under such Sublease whether then due or to accrue in the future or the interest of the Mortgagor as Landlord under such Sublease;

(iii) enter into any amendment or modification of such Sublease which would change the unexpired term thereof or decrease the amount of the Rents payable thereunder or impair the value or utility of the Mortgaged Property or the security provided by this Mortgage;

(iv) terminate (whether by exercising any contractual right of the Mortgagor to recapture leased space or otherwise) or permit the termination of such Sublease or accept surrender of all or any portion of the space demised under such Sublease prior to the end of the term thereof or accept assignment of such Sublease to the Mortgagor unless:

- (A) the Tenant under such Sublease has not paid the equivalent of two (2) months' Rent and the Mortgagor has made reasonable efforts to collect such Rent; or
- (B) the Mortgagor shall deliver to the Mortgagee an Officers' Certificate to the effect that the Mortgagor has entered into a new Sublease (or Subleases) for the space covered by the terminated or assigned Sublease with a term (or terms) which expire(s) no earlier than the date on which the terminated or assigned Sublease was to expire (excluding renewal options), and with a Tenant(s) having a creditworthiness (as reasonably determined by the Mortgagor) sufficient to pay the Rent due under the new Sublease (or Subleases), and the tenant(s) shall have commenced paying rent, including all operating expenses and other amounts payable under the new Sublease (or Subleases) without any abatement or concession; or
- (C) the Mortgagor or a subsidiary desires to use the space leased for its own purposes; or

(v) waive, excuse, condone or in any manner discharge or release any Tenants of or from the obligations of such Tenants under their respective Subleases or guarantors of Tenants from obligations under any guarantees of the Subleases except as the same would be done by a Prudent Operator with due regard for the security afforded the Mortgagee thereby.

SECTION 5.3 Additional Requirements with Respect to New Subleases.

In addition to the requirements of Sections 5.1 and 5.2 hereof, the Mortgagor shall not enter into any Sublease after the date hereof unless the Tenant under such Sublease has entered into a Subordination Agreement.

ARTICLE VI

CONCERNING ASSIGNMENT OF SUBLEASES AND RENTS

SECTION 6.1 License to the Mortgagor. The Mortgagee hereby grants

to the Mortgagor a license to collect and apply the Rents and to enforce the obligations of Tenants under the Subleases. Immediately upon the occurrence and during the continuance of any Event of Default, the license granted in the immediately preceding sentence shall cease and terminate, with or without any notice, action or proceeding or the intervention of a receiver appointed by a court.

SECTION 6.2 Collection of Rents by the Mortgagee.

(i) Any Rents receivable by the Mortgagee hereunder, after payment of all proper costs and charges, shall be applied to the Secured Obligations. The Mortgagee shall be accountable to the Mortgagor only for Rents actually received by the Mortgagee. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

(ii) The Mortgagor hereby authorizes Tenant under each Sublease to rely upon and comply with any and all notices or demands from the Mortgagee for payment of Rents to the Mortgagee and the Mortgagor shall have no claim against Tenant for Rents paid by Tenant to the Mortgagee pursuant to such notice or demand.

SECTION 6.3 No Release. Neither this Mortgage nor any action or

inaction on the part of the Mortgagee shall release Tenant under any Sublease, any guarantor of any Sublease or the Mortgagor from any of their respective obligations under such Subleases or constitute an assumption of any such obligation on the part of the Mortgagee. No action or failure to act on the part of the Mortgagor shall adversely affect or limit the rights of the

Mortgagee under this Mortgage or, through this Mortgage, under such Subleases. Nothing contained herein shall operate or be construed to (i) obligate the Mortgagee to perform any of the terms, covenants or conditions contained in any Sublease or otherwise to impose any obligation upon the Mortgagee with respect to such Sublease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in such Sublease in the event that Tenant under such Sublease shall have been joined as a party defendant in any action by which the estate of such Tenant shall be terminated) or (ii) place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Premises.

SECTION 6.4 Irrevocable Interest. All rights, powers and

privileges of the Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and the Mortgagor shall not take any action under the Subleases or otherwise which is inconsistent with this Mortgage or any of the terms hereof and any such action inconsistent herewith or therewith shall be void.

SECTION 6.5 Amendment to Subleases. Each Sublease, including,

without limitation, all amendments, modifications, supplements, replacements, extensions and renewals thereof, shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

ARTICLE VII

TAXES AND CERTAIN STATUTORY LIENS

SECTION 7.1 Payment of Charges. Unless and to the extent contested

by the Mortgagor in accordance with the provisions of Article IX hereof, the Mortgagor shall pay and discharge, or cause to be paid and discharged, from time to time when the same shall become due and payable by Mortgagor, to the extent such payment and discharge shall be due from Mortgagor pursuant to terms of the

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Mortgaged Lease, all Charges. The Mortgagor shall, upon the Mortgagee's request, deliver to the Mortgagee receipts evidencing the payment of all such Charges.

SECTION 7.2 Escrow of Taxes. From and after the occurrence of an

Event of Default, at the option and upon the request of the Mortgagee, the Mortgagor shall deposit with the Mortgagee in an account maintained by the Mortgagee (the "Tax Escrow Fund"), on the first day of each month, an amount estimated by the Mortgagee to be equal to one-twelfth of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. Such amounts shall be held by the Mortgagee

without interest to the Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such priority as the Mortgagee shall determine, on or before the respective dates on which such obligations or any part thereof would become delinquent. Nothing contained in this Article VII shall (i) affect any right or remedy of the Mortgagee under any

provision hereof or of any statute or rule of law to pay any such amount as provided above from its own funds and to add the amount so paid, together with interest at the Default Rate during such time that any amount remains outstanding, to the Secured Obligations or (ii) relieve the Mortgagor of its obligations to make or provide for the payment of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. During the continuance of any Event of Default, the

Mortgagee may, at its option, apply all or any part of the sums held pursuant to this Section 7.2 to payment and performance of the Secured Obligations. The

Mortgagor shall redeposit with the Mortgagee an amount equal to all amounts so applied as a condition to the cure, if any, of such Event of Default in addition to fulfillment of any other required conditions notwithstanding the foregoing provisions of this subsection 7.2, no deposit with Mortgagee in respect of any item contemplated by this subsection 7.2 shall be required if and for so long as deposits in respect of such item are made by Mortgagor to Lessor under the Mortgaged Lease.

SECTION 7.3 Certain Statutory Liens. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX hereof, the Mortgagor shall timely pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions and social

security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or which might result in forfeiture of all or any part of the Mortgaged Property.

SECTION 7.4 Stamp and Other Taxes. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Secured Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof the Mortgagee may advance the same and the amount so advanced shall be payable by the Mortgagor to the Mortgagee in accordance with the provisions of Section 14.5 hereof.

SECTION 7.5 Certain Tax Law Changes. In the event of the passage

after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any Charges, and imposing any Charges, either directly or indirectly, on this Mortgage, any Interest Rate Protection Agreement or any

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other Loan Document, the Mortgagor shall promptly pay to the Mortgagee such amount or amounts as may be necessary from time to time to pay any such Charges.

SECTION 7.6 Proceeds of Tax Claim. In the event that the proceeds

of any tax claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. The Mortgagee shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of the Mortgagee shall in a reasonably prompt manner be released to the Mortgagor.

ARTICLE VIII

INSURANCE

SECTION 8.1 Required Insurance Policies and Coverages. The

Mortgagor shall comply with all provisions, representations, warranties, conditions and covenants of the Mortgaged Lease pertaining to insurance. Mortgagor shall maintain in full force and effect the greater of the following insurance coverages or the insurance coverages required pursuant to the terms of the Mortgaged Lease in respect of the Premises; provided, however, that to the

extent that the terms of this Mortgage and the Mortgaged Lease require identical coverage, Mortgagor need only maintain one policy or group of policies providing such coverage in respect of the Premises:

(i) Physical hazard insurance on an "all risk" basis covering, without limitation, hazards commonly covered by fire and extended coverage, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in an amount equal to the Full Replacement Cost of the Improvements, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed any such requirements, as would be maintained by a Prudent Operator;

(ii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any other adjoining streets, sidewalks and passageways, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon the Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed such requirements, in such amounts as would be maintained by a Prudent Operator;

(iii) Explosion insurance in respect of any boilers, machinery and similar apparatus located on or comprising the Premises, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require, and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(iv) Business interruption insurance and/or loss of "rental value"

insurance covering one (1) year of loss, the term "rental value" to mean the sum of (x) the total estimated gross rental in-

come from tenant occupancy of the Improvements as furnished and equipped under Subleases and (y) the total amount of all other charges which are the legal obligation of the Tenants of the Premises under Subleases;

(v) If the Premises are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, each as amended, or any successor laws, flood insurance with policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(vi) Worker's compensation insurance as required by the laws of the state where the Premises are located to protect the Mortgagor and the Mortgagee against claims for injuries sustained in the course of employment at the Premises; and

(vii) such other insurance, against risks and with such policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require, and, if no such requirements shall have been imposed, in such amounts as would be maintained by a Prudent Operator.

SECTION 8.2 Required Form of Insurance Policies. Each Insurance

Policy described in Section 8.1 hereof shall provide that:

(i) it may not be modified, reduced, cancelled or otherwise terminated without at least thirty (30) days' prior written notice to the Mortgagee;

(ii) the Mortgagee is permitted to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due;

(iii) all losses thereunder shall be payable notwithstanding any act or negligence of the Mortgagor or its agents or employees which otherwise might have resulted in a forfeiture of all or a part of such insurance payments;

(iv) to the extent such Insurance Policy constitutes Property Insurance, all losses payable thereunder shall be payable to the Mortgagee, as loss payee, pursuant to a standard non-contributory New York mortgagee endorsement and shall be in an amount, at least sufficient to prevent coinsurance liability; and

(v) with respect to Liability Insurance, the Mortgagee shall be named as an additional insured in addition to any additional insureds required to be named under the Mortgaged Lease.

SECTION 8.3 Settlements. Settlement or adjustment of any claim

under any of the Insurance Policies, if such claim involves any loss in excess of \$1,000,000 (in the reasonable judgment of the Mortgagee), shall require the prior written approval of the Mortgagee, and the Mortgagor shall cause each such policy to contain a provision to such effect. The Mortgagor shall be permitted to settle or adjust

any claim under any of the Insurance Policies, if such claim involves any loss less than or equal to \$1,000,000 (in the reasonable judgment of the Mortgagee).

SECTION 8.4 Renewals. At least ten (10) days prior to the

expiration of any Insurance Policy, the Mortgagor shall deliver to the Mortgagee an Insurance Policy or Policies renewing or extending such expiring Insurance Policy or Policies renewal or extension Insurance Certificates or other reasonable evidence of renewal or extension providing that the Insurance Policies are in full force and effect.

SECTION 8.5 Additional Insurance. The Mortgagor shall not purchase

separate insurance policies concurrent in form or contributing in the event of loss with those Insurance Policies required to be maintained under this Article

VIII unless the Mortgagee is included thereon as an additional insured in addition to any additional insureds required to be named under the Mortgaged

Lease and, if applicable, with loss payable to the Mortgagee under an endorsement containing the provisions described in Section 8.2 hereof. The

Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to the Mortgagee the Insurance Policy or Insurance Certificate evidencing such insurance.

SECTION 8.6 Blanket Coverage. The Mortgagor may maintain the coverages required by Section 8.1 hereof under blanket policies covering the Premises and other locations owned or operated by the Mortgagor or an Affiliate of the Mortgagor if the terms of such blanket policies otherwise comply with the provisions of Section 8.1 hereof and contain specific coverage allocations in respect of the Premises complying with the provisions of Section 8.1 hereof.

SECTION 8.7 Delivery After Foreclosure. In the event that the proceeds of any insurance claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the Insurance Policies required to be maintained pursuant to this Mortgage during any redemption period.

ARTICLE IX

CONTESTING OF PAYMENTS

SECTION 9.1 Contesting of Taxes and Certain Statutory Liens. The Mortgagor may at its own expense contest the validity, amount or applicability of any Charges by appropriate legal or administrative proceedings, prosecution of which operates to prevent the collection or enforcement thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy such obligations; provided, however, that (i) any such contest shall be conducted in good faith by appropriate proceedings instituted with reasonable promptness and diligently conducted and (ii) in connection with such contest, the Mortgagor shall have (A) made provision for the payment of such contested Charge on the Mortgagor's books if and to the extent required by GAAP, or (B) at the option and upon the request of the Mortgagee, or the Lessor if so required by the Mortgagee lease, have deposited with the Mortgagee a sum sufficient to pay and discharge such Charge and the Mortgagee's estimate of all interest and penalties related thereto, properly bonded such amount or obtained a stay of enforcement of any such Lien pending the final determination of such proceeding and (C) in the case of any contested judgment, delivered to the Mortgagee an

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instrument in which an insurance carrier acceptable to the Mortgagee shall have agreed in writing that full insurance coverage (subject to a customary deductible) exists in respect of such contested judgment. Notwithstanding the foregoing provisions of this Section 9.1, (i) no contest of any such obligations

may be pursued by the Mortgagor if such contest would expose the Mortgagee or any Lender to (A) any possible criminal liability or (B) unless the Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to the Mortgagee or such Lender, as the case may be, any additional civil liability for failure to comply with such obligations and (ii) if at any time payment or performance of any obligation contested by the Mortgagor pursuant to this Section 9.1 shall become necessary to prevent the imposition of remedies

because of non-payment, or to prevent the occurrence of a default (or a condition which, with the giving of notice or lapse of time or both, may become a default) under the Mortgaged Lease, the Mortgagor shall pay or perform the same in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 9.2 Contesting of Insurance. The Mortgagor shall not take any action that could be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises and the Mortgagor shall otherwise comply in all respects with all Insurance Requirements in respect of the Premises; provided, however,

that the Mortgagor may, at its own expense and after written notice to the Mortgagee, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under Article VIII hereof or (ii) cause the Insurance Policy containing

any such Insurance Requirement to be replaced by a new policy complying with the provisions of Article VIII hereof.

ARTICLE X

DESTRUCTION, CONDEMNATION AND RESTORATION

SECTION 10.1 Destruction. If there shall occur any Destruction,

other than a Destruction for a de minimis amount (which, for the purposes of this Section 10.1 shall mean any Destruction for an amount less than or equal to

\$25,000), the Mortgagor shall, in addition to any notices required under the Mortgaged Lease, promptly send to the Mortgagee a written notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned, subject to the provisions of and to the greatest extent permitted by the Mortgaged Lease, and shall be paid to the Mortgagee and deposited in the Collateral Account. All such proceeds, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net

Insurance Proceeds"), shall be applied in accordance with the provisions of

Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.2 Condemnation. If there shall occur any Taking or the

commencement of any proceeding thereof, the Mortgagor shall, in addition to any notices required under the Mortgaged Lease, immediately notify the Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. The Mortgagee may, at its option, participate in any proceedings or negotiations which might result in any Taking, and the Mortgagor shall deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. The Mortgagee may be represented by counsel

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satisfactory to it at the expense of the Mortgagor in connection with any such participation. The Mortgagor shall pay all fees, costs and expenses incurred by the Mortgagee in connection with any Taking and in seeking and obtaining any award or payment on account thereof. Any proceeds, award or payment in respect of any Taking are hereby assigned and, subject to the provisions of and to the greatest extent permitted by the Mortgaged Lease, shall be paid to the Mortgagee. The Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Condemnation Award"), shall be applied in

accordance with the provisions of Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.3 Restoration. So long as no Event of Default shall

have occurred and be continuing, in the event there shall be a Net Condemnation Award or Net Insurance Proceeds in an amount less than \$1,000,000, the Mortgagor shall have the right, at the Mortgagor's option, but subject nevertheless to the rights of the Lessor under the Mortgaged Lease, to apply such Net Condemnation Award or Net Insurance Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit Agreement or to

perform a restoration (each, a "Restoration") of the Premises. In the event the

Mortgagor is permitted by the terms of the Mortgaged Lease to perform a Restoration and elects to perform a Restoration or in the event that a Mortgaged Lease requires Mortgagor to perform a Restoration pursuant to the immediately preceding sentence, the Mortgagor shall within thirty (30) days after the date that the Mortgagor receives notice of collection by the Lessor or the Mortgagee, as the case may be, of the applicable Net Insurance Proceeds or Net Condemnation Award, as the case may be, deliver to the Mortgagee (i) a written notice of such election and (ii) an Officers' Certificate stating that (A) the Net Insurance Proceeds or Net Condemnation Award, as the case may be, shall be utilized to perform a Restoration in the manner contemplated by this Section 10.3 and (B) no

Event of Default has occurred and is continuing (the items described in clauses (i) and (ii) of this sentence, collectively, the "Restoration Election Notice").

In the event the Mortgagee does not receive a Restoration Election Notice within such 30-day period, the Mortgagee may apply any such Net Insurance Proceeds or Net Condemnation Award held by the Mortgagee to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit

Agreement or, at the option of the Mortgagee, may continue to hold such Net Insurance Proceeds or Net Condemnation Award in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations. In the event the Mortgagor elects to perform any Restoration contemplated by this Section 10.3, the Mortgagee shall release such Net

Condemnation Award or Net Insurance Proceeds to the Mortgagor as soon as practicable following receipt of a Restoration Election Notice in accordance with the provisions of Section 8.2(ii) of the Security Agreement. The Mortgagor

shall, within fifteen (15) days following the date of its receipt of any proceeds in respect of a Destruction or Taking, as the case may be, commence and diligently continue to perform the Restoration of that portion or portions of the Improvements subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Premises will be in the same condition and shall be of at least equal value and utility for its intended purposes as the Premises was immediately prior to such Destruction or Taking. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.4 Major Restoration. In the event there shall be a Net

Condemnation Award or Net Insurance Proceeds in an amount equal to or greater than \$1,000,000, the Mortgagee shall have the option to apply such Net Condemnation Award or Net Insurance Proceeds, as the case may be, to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f)

of the Credit Agreement or to require a Restoration of the Premises. In the event a Restoration is to be performed under

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this Section 10.4, the Mortgagee shall not release any part of the Net

Condemnation Award or Net Insurance Proceeds except in accordance with the provisions of Section 10.5 hereof, and the Mortgagor shall, prior to commencing

any work to effect a Restoration of the Premises, promptly (but in no event later than ninety (90) days following any Destruction or Taking) furnish to the Mortgagee:

(i) complete plans and specifications (the "Plans and Specifications") for the Restoration;

(ii) the written consent of Lessor to the Restoration to the extent such consent is required by the terms of the Mortgaged Lease;

(iii) a certificate (an "Architect's Certificate") of an independent, reputable architect or engineer acceptable to the Mortgagee and licensed in the state where the Premises are located (A) listing all permits and approvals required by law in connection with the Restoration, (B) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained, (C) stating that the Plans and Specifications have been reviewed and approved by the signatory thereto, (D) stating such signatory's estimate (an "Estimate") of the costs of completing the Restoration and (E) stating that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises will be approximately equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration; and

(iv) if the Estimate exceeds the Net Insurance Proceeds or Net Condemnation Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit (a "Restoration Letter of Credit") or other

irrevocable and unconditional commitment to provide funds (each, a "Restoration Commitment") for the payment of the excess cost of such Restoration, payable to or in favor of the Mortgagee, as Collateral Agent, which bond, guaranty, Restoration Letter of Credit or Restoration Commitment (A) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to the Mortgagee and, in the case of a Restoration Letter of Credit or Restoration Commitment, shall be provided by a Lender or other financial institution having capital and surplus in excess of \$500 million as shown in its most recent available statement of financial condition and (B) shall be in an amount not less than the excess of the amount of the Estimate over the amount of the Net Condemnation Award or Net Insurance Proceeds, as the case may be, then held by the Mortgagee for application toward the cost of such Restoration.

The Mortgagee shall have the right to review and approve the Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed. Promptly upon any approval of the Plans and Specifications by the Mortgagee, the Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.5 Restoration Advances Following Destruction or Taking of

Mortgaged Property. In the event the Mortgagor shall be required or permitted

to perform a Restoration of the Premises as provided in Section 10.4 hereof, the

Mortgagee shall apply any Net Insurance Proceeds or the Net Condemnation Award held by the Mortgagee on account of the applicable Destruction or Taking to the

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payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to the Mortgagor or, at the Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other Persons rendering services or material for such Restoration, subject to the following conditions:

(i) Each request for payment shall be made on at least ten (10) days' prior notice to the Mortgagee and shall be accompanied by an Architect's Certificate stating (A) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as approved by the Mortgagee, and in accordance with all provisions of law, (B) the sums requested are required to reimburse the Mortgagor for payments by the Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by the Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (C) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be and (D) that the amount of the Net Insurance Proceeds or Net Condemnation Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an opinion of counsel to the Mortgagor (which counsel shall be independent and acceptable to the Mortgagee), or a title insurance policy, binder or endorsement in form and substance satisfactory to the Mortgagee confirming that (A) all Liens (other than Permitted Collateral Liens) covering that part of the Restoration previously paid for, if any, have been waived and (B) there has not been filed with respect to all or any portion of the Premises any Lien (other than Permitted Collateral Liens); and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Architect's Certificate listing all Permits necessary to comply with all Requirements of Law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event that there shall be any surplus after application of the Net Condemnation Award or the Net Insurance Proceeds to Restoration of the Improvements, such surplus shall be applied as Net Cash Proceeds in accordance with Section 2.13(f) of the Credit Agreement or, at the option of the Mortgagee,

shall be held by the Mortgagee in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1 Events of Default. It shall be an Event of Default

hereunder if there shall have occurred and be continuing an Event of Default under the Credit Agreement.

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SECTION 11.2 Remedies in Case of an Event of Default. If any Event

of Default shall have occurred and be continuing, the Mortgagee may at its option, in addition to any other action permitted under this Mortgage or the

Credit Agreement or by law, statute or in equity, take one or more of the following actions to the greatest extent permitted by local law:

(i) by written notice to the Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

(ii) personally, or by its agents or attorneys, (A) give notice of such Event of Default to Lessor, (B) to the extent permitted by the Mortgaged Lease, act in all respects as lessee in respect of the Mortgaged Lease and perform, on behalf of and for the account of Mortgagor, any of the obligations of lessee thereunder, (C) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Mortgagor relating thereto and, exclude the Mortgagor, its agents and servants wholly therefrom, (D) use, operate, manage and control the Premises and conduct the business thereof, (E) maintain and restore the Premises, (F) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as the Mortgagee may deem advisable, (G) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise or (H) collect and receive all Rents. The Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management except that any amounts so received by the Mortgagee shall be applied as follows:

FIRST: to pay reasonable costs and expenses (including, without

limitation, attorneys' fees and expenses) of so entering upon, taking possession of, holding, operating and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges which the Mortgagee may consider necessary or desirable to pay, and any other amounts due to the Mortgagee;

SECOND: without duplication of amounts applied pursuant to

clause FIRST above, to the indefeasible payment in full in cash of the

Secured Obligations (other than obligations arising under any Interest Rate Protection Agreement) in accordance with the terms of the Credit Agreement;

THIRD: without duplication of amounts applied pursuant to

clauses FIRST and SECOND above, to the indefeasible payment in full in

cash pro rata of the obligations arising under the Interest Rate

Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

FOURTH: the balance, if any, to the Person lawfully entitled

thereto (including the Mortgagor or its successors or assigns), if all conditions to the release hereof shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by the Mortgagee and thereafter applied to any future payments required to be made in accordance with clauses FIRST, SECOND and THIRD above.

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(iii) with or without entry, personally or by its agents or attorneys, (A) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the provisions of Section 11.3 or (B) institute

and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

(iv) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Credit Agreement and the other Loan Documents, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

SECTION 11.3 Sale of Mortgaged Property if Event of Default Occurs;

Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing, the Mortgagee may institute an action to foreclose this Mortgage or take such other action as may be permitted and available to the Mortgagee at law or in equity

for the enforcement of the Credit Agreement and realization on the Mortgaged Property and proceeds thereon through power of sale or to final judgment and execution thereof for the Secured Obligations, and in furtherance thereof the Mortgagee may sell the Mortgaged Property at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. The Mortgagee may execute and deliver to the purchaser at such sale a conveyance of the Mortgaged Property in fee simple and an assignment or conveyance of all the Mortgagor's Interest in the Subleases and the Mortgaged Property, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to make any such recitals, sale, assignment and conveyance, and all of the acts of the Mortgagee as such attorney in fact are hereby ratified and confirmed. The Mortgagor agrees that such recitals shall be binding and conclusive upon the Mortgagor and that any assignment or conveyance to be made by the Mortgagee shall divest the Mortgagor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Mortgaged Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which the Mortgagee may have hereunder, at law or in equity. So long as the Secured Obligations, or any part thereof, remain unpaid, the Mortgagor agrees that possession of the Mortgaged Property by the Mortgagor, or any person claiming under the Mortgagor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Mortgage, the Mortgagor and any person in possession under the Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels in such manner or order as the Mortgagee in its sole discretion may elect. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or all amounts secured hereby are paid in full.

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(ii) In the event of any sale made under or by virtue of this Article XI, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of the Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

(iii) The proceeds of any sale made under or by virtue of this Article XI, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article XI or otherwise, shall be applied as follows:

FIRST: to pay the costs and expenses incurred by the Mortgagee in enforcing its remedies under this Mortgage;

SECOND: to pay the costs and expenses of the sale and of any receiver of the Mortgaged Property or any part thereof appointed pursuant to Section 11.5(ii);

THIRD: without duplication of the amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash of the Secured Obligations (other than the obligations arising under the Interest Rate Protection Agreements) in accordance with the terms of the Credit Agreement;

FOURTH: without duplication of the amounts applied pursuant to clauses FIRST, SECOND and THIRD above, to the indefeasible payment in full in cash pro rata of the obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements and

FIFTH: the balance, if any, to the Person lawfully entitled thereto

(including the Mortgagor or its successors or assigns).

(iv) The Mortgagee (on behalf of any Lender or on its own behalf) or any Lender or any of their respective Affiliates may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article XI and, in lieu of paying cash therefor, may make settlement for

the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Mortgagee, or such Lender in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Mortgagee or such Lender is authorized to deduct under this Mortgage.

(v) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(vi) If the Premises is comprised of more than one parcel of land, the Mortgagee may take any of the actions authorized by this Section 11.3 in

respect of any or a number of individual parcels.

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SECTION 11.4 Additional Remedies in Case of an Event of Default.

(i) The Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof, and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Mortgage. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, the Mortgagee shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall the Mortgagee

receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(ii) Any recovery of any judgment by the Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Mortgaged Property or any part thereof, or any conveyances, powers, rights and remedies of the Mortgagee hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Mortgagee under this Section 11.4

shall be applied in accordance with the provisions of Section 11.3(iii).

SECTION 11.5 Legal Proceedings After an Event of Default.

(i) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, the Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(ii) Upon the occurrence and during the continuance of an Event of Default, the Mortgagee shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. The Mortgagor hereby consents to the appointment of such receiver. Notwithstanding the appointment of any receiver, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Credit Agreement to the Mortgagee.

(iii) The Mortgagor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any ex-

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emption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, the Mortgagor hereby expressly (A) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Mortgage, (B) waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (C) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in connection with this Mortgage and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (D) covenants not to hinder, delay or impede the execution of any power granted or delegated to the Mortgagee by this Mortgage but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Mortgagee shall not be liable for any incorrect or improper payment made pursuant to this Article XI in

the absence of gross negligence or willful misconduct.

SECTION 11.6 Remedies Not Exclusive. No remedy conferred upon or

reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of the Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may elect. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Mortgagor to pay the entire sum then due, and the Mortgagor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

The word "sale" as used in this Article XI with respect to the

Mortgaged Lease shall mean the sale, transfer, assignment or conveyance for value of the leasehold interest of Mortgagor in the Mortgaged Lease, together with all Mortgagor's right, title and interest in and to the other items comprising the Mortgaged Property.

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ARTICLE XII

SECURITY AGREEMENT AND FIXTURE FILING

SECTION 12.1 Security Agreement. To the extent that the Mortgaged

Property includes personal property or items of personal property which are or are to become fixtures under applicable law, this Mortgage shall also be construed as a security agreement under the UCC; and, upon and during the continuance of an Event of Default, the Mortgagee shall be entitled with respect to such personal property to exercise all remedies hereunder, all remedies available under the UCC with respect to fixtures and all other remedies available under applicable law. Without limiting the foregoing, such personal property may, at the Mortgagee's option, (i) be sold hereunder together with any sale of any portion of the Mortgaged Property or otherwise, (ii) be sold pursuant to the UCC, or (iii) be dealt with by the Mortgagee in any other manner permitted under applicable law. The Mortgagee may require the Mortgagor to assemble such personal property and make it available to the Mortgagee at a place to be designated by the Mortgagee. The Mortgagor acknowledges and agrees

that a disposition of the personal property in accordance with the Mortgagee's rights and remedies in respect to the Mortgaged Property as heretofore provided is a commercially reasonable disposition thereof; provided, however, that the

Mortgagee shall give the Mortgagor not less than ten (10) days' prior notice of the time and place of any intended disposition.

SECTION 12.2 Fixture Filing. To the extent that the Mortgaged

Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing hereof in the real estate records of the county in which such Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to such Mortgaged Property, and the following information is applicable for the purpose of such fixture filing, to wit:

<TABLE>
<CAPTION>

Name and Address of the debtor: <S>	Name and Address of the secured party: <C>
The Mortgagor having the address described in the Preamble hereof.	The Mortgagee having the address described in the Preamble hereof.

This Financing Statement covers the following types or items of property:

The Mortgaged Property.

This instrument covers goods or items of personal property which are or are to become fixtures upon the property.

The name of the record owner of the Property on which such fixtures are or are to be located is the Mortgagor.

</TABLE>

ARTICLE XIII

FURTHER ASSURANCES

SECTION 13.1 Recording Documentation To Assure Security. The

Mortgagor shall, forthwith after the execution and delivery hereof and thereafter, from time to time, cause this Mortgage and any financing statement, continuation statement or similar instrument relating to any thereof or to any property intended to be subject to the Lien hereof to be filed, registered and recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the validity and priority thereof or the Lien hereof purported to be created upon the Mortgaged Property and the interest and rights of the Mortgagee therein. Mortgagor shall (if it has not already done so), at its sole cost and expense, properly, duly and validly record an appropriate memorandum of the Mortgaged Lease and any amendments or supplements thereto in each jurisdiction in which any of the Land may be situated. The Mortgagor shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all Federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

SECTION 13.2 Further Acts. The Mortgagor shall, at the sole cost

and expense of the Mortgagor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, financing statements, continuation statements, instruments and assurances as the Mortgagee shall from time to time request, which may be necessary in the reasonable judgment of the Mortgagee from time to time to assure, perfect, convey, assign, mortgage, transfer and confirm unto the Mortgagee, the property and rights hereby conveyed or assigned or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee or for carrying out the intention or facilitating the performance of the terms hereof or the filing, registering or recording hereof. Without limiting the generality of the foregoing, in the event that the Mortgagee desires to exercise any remedies, consensual rights or attorney-in-fact powers set forth in this Mortgage and reasonably determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Mortgagee, the Mortgagor agrees to use its best efforts to assist and aid the Mortgagee to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers. In the event the Mortgagor shall fail after demand to execute any instrument or take any action required to be executed or taken by the Mortgagor under this Section 13.2, the Mortgagee may execute or take the

same as the attorney-in-fact for the Mortgagor, such power of attorney being coupled with an interest and is irrevocable.

SECTION 13.3 Additional Security. Without notice to or consent of

the Mortgagor and without impairment of the Lien and rights created by this Mortgage, the Mortgagee may accept (but the Mortgagor shall not be obligated to furnish) from the Mortgagor or from any other Person, additional security for the Secured Obligations. Neither the giving hereof nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, and, second, to the security created by this Mortgage without affecting the Mortgagee's Lien and rights under this Mortgage.

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ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Covenants To Run with the Land. All of the grants,

covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to, and bind the successors and assigns of, the Mortgagor. If there shall be more than one mortgagor with respect to the Mortgaged Property, the covenants and warranties hereof shall be joint and several.

SECTION 14.2 No Merger. The rights and estate created by this

Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Mortgagee unless the Mortgagee shall have consented to such merger in writing.

SECTION 14.3 Concerning Mortgagee.

(i) The Mortgagee has been appointed as collateral agent pursuant to the Credit Agreement. The actions of the Mortgagee hereunder are subject to the provisions of the Credit Agreement. The Mortgagee shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Mortgaged Property), in accordance with this Mortgage and the Credit Agreement. The Mortgagee may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Mortgagee may resign and a successor Mortgagee may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Mortgagee by a successor Mortgagee, that successor Mortgagee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Mortgagee under this Mortgage, and the retiring Mortgagee shall thereupon be discharged from its duties and obligations under this Mortgage. After any retiring Mortgagee's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Mortgagee.

(ii) The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property in its possession if such Mortgaged Property is accorded treatment substantially equivalent to that which the Mortgagee, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Mortgagee nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Mortgaged Property.

(iii) The Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Lender, the Mortgagee shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include the Mortgagee in its individual capacity as a Lender. The Mortgagee may accept deposits from, lend money to, and generally engage in

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any kind of banking, trust or other business with the Mortgagor or any Affiliate of the Mortgagor to the same extent as if the Mortgagee were not acting as collateral agent.

(v) If any portion of the Mortgaged Property also constitutes collateral granted to the Mortgagee under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any

conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Mortgagee, in its sole discretion, shall select which provision or provisions shall control.

SECTION 14.4 Mortgagee May Perform; Mortgagee Appointed Attorney-in-

Fact. If the Mortgagor shall fail to perform any covenants contained in this

Mortgage (including, without limitation, the Mortgagor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Mortgagor under any Mortgaged Property) or if any warranty on the part of the Mortgagor contained herein shall be breached, the Mortgagee may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the

Mortgagee shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Mortgagor fails to pay or perform as and when required hereby and which the Mortgagor does not contest in accordance with the provisions of Section 14.5 hereof. Any and all reasonable

amounts so expended by the Mortgagee shall be paid by the Mortgagor in accordance with the provisions of Article IX hereof. Neither the provisions of

this Section 14.4 nor any action taken by the Mortgagee pursuant to the

provisions of this Section 14.4 shall prevent any such failure to observe any

covenant contained in this Mortgage nor any breach of warranty from constituting an Event of Default. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact, with full authority in the place and stead of the Mortgagor and in the name of the Mortgagor, or otherwise, from time to time in the Mortgagee's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents which the Mortgagee may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 14.5 Expenses The Mortgagor will upon demand pay to the

Mortgagee the amount of any and all reasonable costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Mortgagee may incur in connection with (i) any action, suit or other proceeding affecting the Mortgaged Property or any part thereof commenced, in which action, suit or proceeding the Mortgagee is made a party or participates or in which the right to use the Mortgaged Property or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Mortgagee to defend or uphold the Lien hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Mortgaged Property with any Requirements of Law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Mortgaged Property, (v) the exercise or enforcement of any of the rights of the Mortgagee or any Secured Party hereunder or (vi) the failure by the Mortgagor to perform or observe any of the provisions hereof. All reasonable amounts expended by the Mortgagee and payable by the Mortgagor under this Section 14.5 shall be due upon demand therefor (together

with interest thereon accruing at the Default Rate during the period from and including the date on which such funds were so expended to the date of

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repayment) and shall be part of the Secured Obligations. The Mortgagor's obligations under this Section 14.5 shall survive the termination hereof and the

discharge of the Mortgagor's other obligations under this Mortgage, the Credit Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

SECTION 14.6 Indemnity.

(i) The Mortgagor agrees to indemnify, pay and hold harmless the Mortgagee and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Mortgagee and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other

liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto),

which may be imposed on, incurred by or asserted against that Indemnitee, in any manner relating to or arising out hereof, any Interest Rate Protection Agreement, or any other Loan Document (including, without limitation, any misrepresentation by the Mortgagor in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document) (the "Indemnified

Liabilities"); provided, however, that the Mortgagor shall have no obligation to

an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all appeals and the expiration of time to appeal) by a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence, bad faith or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Mortgagor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

(ii) Survival. The obligations of the Mortgagor contained in this Section 14.6 shall survive the termination hereof and the discharge of the Mortgagor's other obligations under this Mortgage any Interest Rate Protection Agreement and the other Loan Documents.

(iii) Reimbursement. Any amount paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Mortgaged Property.

SECTION 14.7 Continuing Security Interest; Assignment. This Mortgage shall create a continuing Lien on and security interest in the Mortgaged Property and shall (i) be binding upon the Mortgagor, its respective successors and assigns and (ii) inure, together with the rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and the other Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Loan Party) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Lender may assign or otherwise transfer any indebtedness held by it secured by this Mortgage to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender, herein or otherwise, subject however, to the provisions of the Credit Agreement and any applicable Interest Rate Protection Agreement.

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SECTION 14.8 Termination; Release. When all the Secured Obligations have been paid in full and the Commitments of the Lenders to make any Loan or to issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated, this Mortgage shall terminate. Upon termination hereof or any release of the Mortgaged Property or any portion thereof in accordance with the provisions of the Credit Agreement, the Mortgagee shall, upon the request and at the sole reasonable cost and expense of the Mortgagor, forthwith assign, transfer and deliver to the Mortgagor, against receipt and without recourse to or warranty by the Mortgagee, such of the Mortgaged Property to be released (in the case of a release) as may be in possession of the Mortgagee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

SECTION 14.9 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by the Mortgagee. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Mortgagor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mortgage or any other Loan Document, no notice or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 14.10 Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to the Mortgagor or the Mortgagee, addressed to it at

the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 14.10.

SECTION 14.11 GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY

TRIAL. THIS MORTGAGE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED

IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF MORTGAGED PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. MORTGAGOR AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS SET FORTH IN THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE MORTGAGEE SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY MORTGAGOR REFUSES TO ACCEPT SERVICE, MORTGAGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF MORTGAGEE TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION.

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THE PLEDGORS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 14.12 Severability of Provisions. Any provision hereof

which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 14.13 Limitation on Interest Payable. It is the intention

of the parties to conform strictly to the usury laws, whether state or Federal, that are applicable to the transaction of which this Mortgage is a part. All agreements between the Mortgagor and the Mortgagee whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by the Mortgagor for the use, forbearance or detention of the money to be loaned under the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, or for the payment or performance of any covenant or obligation contained herein or in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any such provision, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances the Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to the Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any extension of credit by the Mortgagee shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date hereof until payment in full of the Secured Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 14.14 Business Days. In the event any time period or any

date provided in this Mortgage ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 14.15 Relationship. The relationship of the Mortgagee to

the Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage, any Interest Rate Protection Agreement or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and

SECTION 14.16 Waiver of Stay.

(i) The Mortgagor agrees that in the event that the Mortgagor or any property or assets of the Mortgagor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or the Mortgagor shall otherwise be a party to any Federal or state bankruptcy, insolvency, moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such law is applicable, then, in any such case, whether or not the Mortgagee has commenced foreclosure proceedings under this Mortgage, the Mortgagee shall be entitled to relief from any such automatic stay as it relates to the exercise of any of the rights and remedies (including, without limitation, any foreclosure proceedings) available to the Mortgagee as provided in this Mortgage or in any other Security Document.

(ii) The Mortgagee shall have the right to petition or move any court having jurisdiction over any proceeding described in Section 14.16(i) hereof for

the purposes provided therein, and the Mortgagor agrees (i) not to oppose any such petition or motion and (ii) at the Mortgagor's sole cost and expense, to assist and cooperate with the Mortgagee, as may be requested by the Mortgagee from time to time, in obtaining any relief requested by the Mortgagee, including, without limitation, by filing any such petitions, supplemental petitions, requests for relief, documents, instruments or other items from time to time requested by the Mortgagee or any such court.

SECTION 14.17 No Credit for Payment of Taxes or Impositions. The

Mortgagor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and the Mortgagor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Charge on the Mortgaged Property or any part thereof.

SECTION 14.18 No Claims Against the Mortgagee. Nothing contained

in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 14.19 Obligations Absolute.

All obligations of the Mortgagor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Mortgagor or any other Obligor;

(ii) any lack of validity or enforceability of the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof, any Interest Rate Protection Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 14.9

hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Mortgagor.

SECTION 14.20 Mortgagee's Right To Sever Indebtedness.

(i) The Mortgagor acknowledges that (A) the Mortgaged Property does not constitute the sole source of security for the payment and performance of the Secured Obligations and that the Secured Obligations are also secured by property of the Mortgagor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (B) the number of such jurisdictions

and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a separate credit agreement or interest rate protection agreement and (C) the Mortgagor intends that the Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that the Mortgagee would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement, interest rate protection agreement, mortgage or security instrument. In furtherance of such intent, the Mortgagor agrees that the Mortgagee may at any time by notice (an "Allocation Notice") to the

Mortgagor allocate a portion (the "Allocated Indebtedness") of the Secured

Obligations to the Mortgaged Property and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of the Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Protection Agreement, any other Loan Document or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to the Mortgagor and shall not be available hereunder to satisfy any Secured Obligations of the Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien hereof or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by the Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and the Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 14.20, the

proceeds received by the Mortgagee pursuant to this Mortgage shall be applied by the Mortgagee in accordance with the provisions of Section 11.3(iii) hereof.

(ii) The Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien hereof or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because the Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by the Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that the Mortgagee is not entitled to a deficiency judgment, the Mortgagor shall not (A) introduce in any other jurisdiction such judgment as a defense to enforcement against the Mortgagor of any remedy in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document or (B) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 14.20,

including, without limitation, any amendment to this Mortgage, any substitute promissory note or affidavit or certificate of any kind, the Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of the Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

(iv) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 14.20 shall be effective only to the maximum extent permitted by law.

SECTION 14.21 Mortgaged Lease.

(i) Mortgagor shall punctually and properly perform, observe and otherwise comply with each and every covenant, agreement, requirement and condition set forth in the Mortgaged Lease and do or cause to be done all things necessary or appropriate to keep the Mortgaged Lease in full force and effect and to preserve and keep unimpaired the rights of Mortgagor thereunder. Upon request of Mortgagee, Mortgagor shall, subject to the terms of the Mortgaged Lease, request from Lessor an estoppel certificate, addressed to Mortgagee, stating that there is no default under the Mortgaged Lease, or any state of facts which, with the passage of time or notice or both, would constitute a default thereunder, or if there be any default under the Mortgaged Lease, giving the details thereof.

(ii) In the event Mortgagor acquires the fee simple title or any other estate or interest in the property subject to the Mortgaged Lease, such acquisition will not merge with the leasehold estate created by the Mortgaged Lease, but such other estate or interest will remain discrete and immediately become subject to the Lien of this Mortgage, and Mortgagor shall execute, acknowledge and deliver any instruments requested by Mortgagee to confirm the coverage of the Lien evidenced hereby upon such other estate or interest. Mortgagor shall pay any and all conveyance or mortgage taxes and filing or similar fees in connection with the execution, delivery, filing or recording of any such instrument.

(iii) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any default (or any event which, with the lapse of time or notice or both, would constitute a default) on the part of or caused by any party to the Mortgaged Lease. If for any reason Mortgagor cannot timely make any payment under the Mortgaged Lease or perform or comply with any of its obligations under the Mort-

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gaged Lease, Mortgagor shall notify Mortgagee in sufficient time to enable Mortgagee (but Mortgagee shall not be obligated) timely to make such payments and/or to perform or comply with such other obligations. On receipt by Mortgagee from Mortgagor pursuant to this subsection 14.21(iii), or from Lessor under the Mortgaged Lease, of any such notice of default by, or inability to make any payment by, Mortgagor thereunder, Mortgagee may rely thereon and, after notice to Mortgagor, take such action as Mortgagee deems necessary or desirable to cure such default, even though the existence of such default or the nature thereof is denied by Mortgagor or by any other person.

(iv) Mortgagor shall not surrender the leasehold estate created by the Mortgaged Lease, or terminate or cancel the Mortgaged Lease. Mortgagor shall not, without the prior written consent of Mortgagee, amend, modify, surrender, impair, forfeit, cancel, or terminate, or permit the amendment, modification, surrender, impairment, forfeiture, cancellation, or termination of the Mortgaged Lease in whole or in part, whether or not a default shall have occurred and shall be continuing under either thereof. Any such termination, cancellation, modification, change, supplement, alteration, amendment or extension without the prior written consent contemplated by this subsection 14.21(iv) shall be void and of no force or effect.

(v) No release or forbearance of any of Mortgagor's obligations under the Mortgaged Lease, pursuant to the terms thereof, by agreement, operation of law or otherwise, shall release Mortgagor from any of Mortgagor's obligations under this Mortgage, including, without limitation, Mortgagor's obligations with respect to the payment of rent as provided in the Mortgaged Lease and the performance of all of the other terms, provisions, covenants, conditions and agreements contained in the Mortgaged Lease to be performed by Mortgagor thereunder.

(vi) The leasehold estate of Mortgagor created by the Mortgaged Lease and the estate of Lessor under the Mortgaged Lease shall each at all times remain separate and apart and retain their separate identities, and no merger of the leasehold or easement estate of Mortgagor with the estate of Lessor will result with respect to Mortgagee or with respect to any purchaser acquiring the Mortgaged Property at any sale on foreclosure of the Lien of this Mortgage without the written consent of Mortgagee.

(vii) Mortgagor covenants and agrees that the Mortgaged Lease now is and shall at all times be subject in each and every respect to the terms, conditions and Lien of this Mortgage. Mortgagor shall execute, acknowledge and deliver any instruments requested by Mortgagee to confirm the foregoing.

(viii) Mortgagor covenants and agrees that if it shall be the subject of a proceeding under the Federal Bankruptcy Code, it shall not elect to treat the Mortgaged Lease as terminated (pursuant to Section 365 of the Federal Bankruptcy Code or any similar statute or law) without the prior written consent of Mortgagee. Mortgagor hereby irrevocably assigns to Mortgagee the right to exercise such election.

Mortgagor agrees to the provisions of Section 846.103 of the Wisconsin Statutes, or any successor provision, permitting Mortgagee, at its option upon waiving the right to judgment for deficiency, to hold a foreclosure sale of real estate three (3) months after a foreclosure judgment is entered.

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IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed and delivered under seal the day and year first above written.

APW Tools & Supplies, Inc., as Mortgagor

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 2000, by [_____] as .[_____] of [_____].

_____(SEAL)
Print Name: _____
Notary Public, _____
State of _____
My commission _____

Schedule A

[Legal Description]

Schedule B

Each of the liens and other encumbrances excepted as being prior to the Lien hereof as set forth in Schedule B to the marked title insurance commitment

issued by First American Title Insurance Company, dated as of the date hereof and delivered to Collateral Agent on the date hereof, bearing First American Title Company reference number 000700071 relating to the real property described in Schedule A attached hereto.

Exhibit 1

FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMEN T AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2000 by and between CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York branch, as collateral agent, having an office at Eleven Madison Avenue, New York, New York 10010 (in such capacity, "Collateral Agent"), and _____, having an office at _____ ("Tenant").

R E C I T A L S :

A. Tenant is the tenant under a certain lease dated _____, between _____, as landlord ("Landlord"), and Tenant, as tenant (as amended through the date hereof, the "Lease"), pursuant to which Tenant leased a portion (the "Leased Premises") of the property known as _____, located at _____, as more particularly described in Schedule A attached hereto (the "Property").

B. Landlord has or will grant a mortgage lien on and security interest in the Property to Collateral Agent (for its benefit and for the benefit of the lending institutions from time to time party to that certain credit agreement dated as of July 31, 2000) pursuant to one or more mortgages,

deeds of trust, deeds to secure debt or similar security instruments (collectively, the "Security Instruments").

C. Tenant has agreed to subordinate the Lease to the Security Instruments and to the lien thereof and Collateral Agent has agreed not to disturb Tenant's possessory rights in the Leased Premises under the Lease on the terms and conditions hereinafter set forth.

A G R E E M E N T:
- - - - -

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth

in the Lease, the Lease and the leasehold estate created thereby and all of Tenant's rights thereunder are and shall at all times be subject and subordinate in all respects to the Security Instruments and the lien thereof, and to all rights of Collateral Agent thereunder, and to any and all advances to be made thereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof.

2. Nondisturbance. So long as Tenant complies with the provisions of

this Agreement, pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Collateral Agent agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the Leased Premises as described in the Lease will not be disturbed during the term of the Lease by reason of a foreclosure. For purposes of

this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instruments, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any

Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness.

4. No Liability. Notwithstanding anything to the contrary contained

herein or in the Lease, it is specifically understood and agreed that neither the Collateral Agent, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (including Landlord); or

(b) liable for any failure of any prior landlord (including Landlord) to construct any improvements or bound by any covenant to construct any improvement either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space pursuant to any expansion right contained in the Lease; or

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including Landlord); or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord) or by any security deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or

(e) liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property; or

(f) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the written consent of Collateral Agent; or

(g) bound by any consensual or negotiated surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

Notwithstanding the foregoing, Tenant reserves its right to any and all claims or causes of action (i) against such prior landlord for prior losses

or damages and (ii) against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

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5. Certain Acknowledgments and Agreements by Tenant. (a) Tenant has

notice that the Lease and the rents and all other sums due thereunder have been assigned to Collateral Agent as security for the notes secured by the Security Instruments. In the event Collateral Agent notifies Tenant of the occurrence of a default under the Security Instruments and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Collateral Agent, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Collateral Agent or as otherwise authorized in writing by Collateral Agent. Landlord irrevocably authorizes Tenant to make the foregoing payments to Collateral Agent upon such notice and demand.

(b) Tenant shall send a copy of any and all notices or statements under the Lease to Collateral Agent at the same time such notices or statements are sent to Landlord.

(c) This Agreement satisfies any and all conditions or requirements in the Lease relating to the granting of a non-disturbance agreement.

6. Collateral Agent to Receive Default Notices. Tenant shall notify

Collateral Agent of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Collateral Agent shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default or, if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. Estoppel. Tenant hereby certifies and represents to Collateral

Agent that as of the date of this Agreement:

(a) the Lease is in full force and effect;

(b) all requirements for the commencement and validity of the Lease have been satisfied and there are no unfulfilled conditions to Tenant's obligations under the Lease;

(c) Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease; to the best of Tenant's knowledge, Landlord is not in default under the Lease; no act, event or condition has occurred which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; no claim by Tenant of any nature exists against Landlord under the Lease; and all obligations of Landlord have been fully performed;

(d) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease;

(e) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one (1) month in advance;

(f) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Leased Premises;

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(g) the Lease has not been modified or amended and constitutes the entire agreement between Landlord and Tenant relating to the Leased Premises;

(h) Tenant has not assigned, mortgaged, sublet, encumbered, conveyed or otherwise transferred any or all of its interest under the Lease; and

(i) Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary action.

8. Notices. All notices or other written communications hereunder

shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the United States Postal Service and sent by registered or

certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. Successors. The obligations and rights of the parties pursuant to

this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties; provided, however,

that in the event of the assignment or transfer of the interest of Collateral Agent, all obligations and liabilities of Collateral Agent under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Collateral Agent's interest is assigned or transferred; and provided, further, that the interest of Tenant under this

Agreement may not be assigned or transferred without the prior written consent of Collateral Agent. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different from the Landlord named in the Recitals.

10. Duplicate Original; Counterparts. This Agreement may be executed

in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

11. Limitation of Collateral Agent's Liability. (a) Collateral

Agent shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(b) In the event that Collateral Agent shall acquire title to the Leased Premises or the Property, Collateral Agent shall have no obligation, nor incur any liability, beyond Collateral Agent's then equity interest, if any, in the Leased Premises, and Tenant shall look exclusively to such equity interest of Collateral Agent, if any, in the Leased Premises for the payment and discharge of any obligations imposed

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upon Collateral Agent hereunder or under the Lease, and Collateral Agent is hereby released and relieved of any other obligations hereunder and under the Lease.

12. Modification in Writing. This Agreement may not be modified

except by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Lien of Security Instruments. Nothing contained in this

Agreement shall in any way impair or affect the lien created by the Security Instruments or the provisions thereof.

14. Compliance with Lease. Tenant agrees that in the event there is

any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease, the terms and provisions hereof shall be controlling.

15. Governing Law; Severability. This Agreement shall be governed by

the laws of the State of []. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Further Actions. Tenant agrees at its own expense to execute and

deliver, at any time and from time to time upon the request of Collateral Agent or any Acquiring Party, such documents and instruments (in recordable form, if requested) as may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to fully implement or to further evidence the understandings and agreements contained in this Agreement. Moreover, Tenant hereby irrevocably appoints and constitutes Collateral Agent or any Acquiring

BORROWING REQUEST

Credit Suisse First Boston, as Administrative Agent for
the Lenders,
Eleven Madison Avenue
New York, NY 10010

Attention of: Julia Kingsbury

July 26, 2000

Ladies and Gentlemen:

The undersigned refers to the Commitment Letter dated May 30, 2000 among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), FIRST UNION NATIONAL BANK and ING (U.S.) CAPITAL LLC (the "Commitment Letter") and the Credit Agreement to be entered into in connection therewith (substantially in the form delivered to you and us on the date hereof, the "Credit Agreement"). Capitalized terms used and not defined herein are used with the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

- (A) Date of Borrowing
(which is a Business Day) August 1, 2000
- (B) Principal Amount of
Borrowing/1/ Euros 31,866,000

- (C) Type of borrowing and interest rate basis/2/
Tranche A Term

Eurocurrency Borrowing

- (D) Interest Period and the last
day thereof/3/ 30 Day

- (E) Funds are requested to be disbursed to the Borrower's account with
Bank One N.A. Frankfurt (Account No. 100-4247EUR5001FRBR)
- Swift Address: FNBCBEFX
- Account Name: Bank One NA, Chicago
- Reference: FX

- /1/ Must be an amount that is at least \$5,000,000 (or the Alternative Currency Equivalent thereof) and an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) or equal to the remaining available balance of the applicable Commitments.
- /2/ Specify (a) Tranche A Term Borrowing (and the amounts of each currency applicable to such Borrowing), Tranche B Term Borrowing or Revolving Credit Borrowing and (b) Eurodollar Borrowing or ABR Borrowing.
- /3/ Which shall be subject to the definition of "Interest Period" in the Credit Agreement.

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The Borrower hereby represents and warrants that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement shall have been satisfied as of the date of the Borrowing.

The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10 of the Credit Agreement) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b)

any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this paragraph shall be delivered to the Borrower and shall be conclusive absent manifest error.

Applied Power Inc.
(doing) business as Actuant Corporation)

By: _____
Name: Andrew G. Lampereur
Title: Vice President, Actuant Finance Leader

BORROWING REQUEST

Credit Suisse First Boston, as Administrative Agent for
the Lenders,
Eleven Madison Avenue
New York, NY 10010

Attention of: Julia Kingsbury

July 26, 2000

Ladies and Gentlemen:

<TABLE>
<CAPTION>
<S>

<C>

The undersigned refers to the Commitment Letter dated May 30, 2000 among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), FIRST UNION NATIONAL BANK and ING (U.S.) CAPITAL LLC (the "Commitment Letter") and the Credit Agreement to be entered into in connection therewith (substantially in the form delivered to you and us on the date hereof, the "Credit Agreement"). Capitalized terms used and not defined herein are used with the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

- | | |
|---|---|
| (A) Date of Borrowing
(which is a Business Day) | August 1, 2000 |
| (B) Principal Amount of
Borrowing/1/ | U.S. \$ 75,000,000.00

(Seventy Five Million U.S. Dollars) |
| (C) Type of borrowing and interest rate basis/2/ | Tranche A Term Borrowing
----- |
| (D) Interest Period and the last
day thereof/3/ | 90 Day LIBOR
----- |
| (E) Funds are requested to be disbursed to the Borrower's account with
Bank One (Account No. 10-61597) | |

</TABLE>

- 1 Must be an amount that is at least \$5,000,000 (or the Alternative Currency Equivalent thereof) and an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) or equal to the remaining available balance of the applicable Commitments.
- 2 Specify (a) Tranche A Term Borrowing (and the amounts of each currency applicable to such Borrowing), Tranche B Term Borrowing or Revolving Credit Borrowing and (b) Eurodollar Borrowing or ABR Borrowing.
- 3 Which shall be subject to the definition of "Interest Period" in the Credit Agreement.

-2-

<TABLE>
<CAPTION>
<S>

<C>

The Borrower hereby represents and warrants that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement shall have been satisfied as of the date of the Borrowing.

The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10 of the Credit Agreement) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this paragraph shall be delivered to the Borrower and shall be conclusive absent manifest error.

Applied Power Inc.
(doing business as Actuant Corporation)

By:

Name: Andrew G. Lampereur
Title: Vice President, Actuant Finance Leader

</TABLE>

BORROWING REQUEST

Credit Suisse First Boston, as Administrative Agent for
the Lenders,
Eleven Madison Avenue
New York, NY 10010

Attention of: Julia Kingsbury

July 26, 2000

Ladies and Gentlemen:

The undersigned refers to the Commitment Letter dated May 30, 2000 among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), FIRST UNION NATIONAL BANK and ING (U.S.) CAPITAL LLC (the "Commitment Letter") and the Credit Agreement to be entered into in connection therewith (substantially in the form delivered to you and us on the date hereof, the "Credit Agreement"). Capitalized terms used and not defined herein are used with the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

<TABLE>	
<S>	<C>
(A) Date of Borrowing (which is a Business Day)	August 1, 2000
(B) Principal Amount of Borrowing/1/	U.S. \$10,000,000.00 ----- (Ten Million U.S. Dollars)
(C) Type of borrowing and interest rate basis/2/	Tranche A Term Borrowing -----
(D) Interest Period and the last day thereof/3/	30 Day LIBOR -----
(E) Funds are requested to be disbursed to the Borrower's account with Bank One (Account No. 10-61597)	
</TABLE>	

- /1/ Must be an amount that is at least \$5,000,000 (or the Alternative Currency Equivalent thereof) and an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) or equal to the remaining available balance of the applicable Commitments.
- /2/ Specify (a) Tranche A Term Borrowing (and the amounts of each currency applicable to such Borrowing), Tranche B Term Borrowing or Revolving Credit Borrowing and (b) Eurodollar Borrowing or ABR Borrowing.
- /3/ Which shall be subject to the definition of "Interest Period" in the Credit Agreement.

-2-

The Borrower hereby represents and warrants that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement shall have been satisfied as of the date of the Borrowing.

The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10 of the Credit Agreement) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this paragraph shall be delivered to the Borrower and shall be conclusive absent manifest error.

Applied Power Inc.
(doing business as Actuant Corporation)

By: _____
Name: Andrew G. Lampereur
Title: Vice President, Actuant Finance Leader

BORROWING REQUEST

Credit Suisse First Boston, as Administrative Agent for
the Lenders,
Eleven Madison Avenue
New York, NY 10010

Attention of: Julia Kingsbury

July 26, 2000

Ladies and Gentlemen:

The undersigned refers to the Commitment Letter dated May 30, 2000 among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), FIRST UNION NATIONAL BANK and ING (U.S.) CAPITAL LLC (the "Commitment Letter") and the Credit Agreement to be entered into in connection therewith (substantially in the form delivered to you and us on the date hereof, the "Credit Agreement"). Capitalized terms used and not defined herein are used with the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

<TABLE>
<CAPTION>

<p><S> (A) Date of Borrowing (which is a Business Day)</p>	<p><C></p>	<p>August 1, 2000</p>
--	------------------	-----------------------

(B) Principal Amount of Borrowing/1/	U.S. \$ 115,000,000.00 ----- (One Hundred Fifteen Million U.S. Dollars)
(C) Type of borrowing and interest rate basis/2/	Tranche B Term Borrowing -----
(D) Interest Period and the last day thereof/3/	90 Day -----

</TABLE>

(E) Funds are requested to be disbursed to the Borrower's account with Bank One (Account No. 10-61597)

- /1/ Must be an amount that is at least \$5,000,000 (or the Alternative Currency Equivalent thereof) and an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) or equal to the remaining available balance of the applicable Commitments.
- /2/ Specify (a) Tranche A Term Borrowing (and the amounts of each currency applicable to such Borrowing), Tranche B Term Borrowing or Revolving Credit Borrowing and (b) Eurodollar Borrowing or ABR Borrowing.
- /3/ Which shall be subject to the definition of "Interest Period" in the Credit Agreement.

The Borrower hereby represents and warrants that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement shall have been satisfied as of the date of the Borrowing.

The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10 of the Credit Agreement) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this paragraph shall be delivered to the Borrower and shall be conclusive absent manifest error.

Applied Power Inc.
(doing business as Actuant Corporation)

By: _____
Name: Andrew G. Lampereur
Title: Vice President, Actuant Finance Leader

BORROWING REQUEST

Credit Suisse First Boston, as Administrative Agent for
the Lenders,
Eleven Madison Avenue
New York, NY 10010

Attention of: Julia Kingsbury

July 26, 2000

Ladies and Gentlemen:

The undersigned refers to the Commitment Letter dated May 30, 2000 among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), CREDIT SUISSE FIRST BOSTON, a bank organized

under the laws of Switzerland, acting through its New York Branch ("CSFB"), FIRST UNION NATIONAL BANK and ING (U.S.) CAPITAL LLC (the "Commitment Letter") and the Credit Agreement to be entered into in connection therewith (substantially in the form delivered to you and us on the date hereof, the "Credit Agreement"). Capitalized terms used and not defined herein are used with the meanings assigned to such terms in the Credit Agreement. The Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

- (A) Date of Borrowing
(which is a Business Day) August 1, 2000
- (B) Principal Amount of
Borrowing/1/ U.S. \$ 10,000,000.00

(Ten Million U.S. Dollars)
- (C) Type of borrowing and interest rate basis/2/
Tranche B Term Borrowing

- (D) Interest Period and the last
day thereof/3/ 30 Day

- (E) Funds are requested to be disbursed to the Borrower's account with
Bank One (Account No. 10-61597)

/1/ Must be an amount that is at least \$5,000,000 (or the Alternative Currency Equivalent thereof) and an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) or equal to the remaining available balance of the applicable Commitments.

/2/ Specify (a) Tranche A Term Borrowing (and the amounts of each currency applicable to such Borrowing), Tranche B Term Borrowing or Revolving Credit Borrowing and (b) Eurodollar Borrowing or ABR Borrowing.

/3/ Which shall be subject to the definition of "Interest Period" in the Credit Agreement.

-2-

The Borrower hereby represents and warrants that the conditions to lending specified in Section 4.01(b) and (c) of the Credit Agreement shall have been satisfied as of the date of the Borrowing.

The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10 of the Credit Agreement) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this paragraph shall be delivered to the Borrower and shall be conclusive absent manifest error.

Applied Power Inc.
(doing business as Actuant Corporation)

By: _____
Name: Andrew G. Lampereur

CREDIT FIRST
SUISSE BOSTON

ADMINISTRATIVE QUESTIONNAIRE-ACTUANT CORPORATION

<TABLE>
<S> <C> <C>

Lending Institution: _____

Name for Signature Pages: _____
Will sign Credit Agreement: []
Will come via Assignment: [] Number of Days post Closing: _____

Name of Signature Blocks: _____

Name for Publicity: _____

Address: _____

Main Telephone: _____ Telex No./Answer back: _____

CONTACT-Credit Name: _____
Address: _____
Telephone: _____
Fax: _____

CONTACT-Operations Name: _____
Address: _____
Telephone: _____
Fax: _____

PAYMENT INSTRUCTIONS

Bank Name: _____
ABA/Routing No. _____
Account Name _____
Account No. _____
For further credit: _____
Account No. _____
Attention: _____
Reference: _____

CREDIT SUISSE FIRST BOSTON ADMINISTRATIVE DETAILS

CREDIT SUISSE FIRST BOSTON	Account Administrator	Secondary Contact
11 Madison Avenue	-----	-----
New York, NY 10010	Tel: (212) 325-	Tel: (212) 325-
Main Telephone: (212) 325-9000	Fax: (212) 325-	Fax: (212) 325-
Wire Instructions:	The Agent's wire instructions will be disclosed at the time of closing.	

Rider: New York Stock Perfection

After giving effect to the delivery of the certificates representing
(i) the Pledged Shares (as defined in the Security Agreement) listed on Schedule

1.1(d) to the Security Agreement, together with undated stock powers, duly

endorsed in blank and (ii) the Pledged Interests (as defined in the Security Agreement) listed on Schedule 1.1(c) to the Security Agreement, together with

undated Interest powers, duly endorsed in blank, and assuming the continued possession and control by the Collateral Agent of such Pledged Shares and Pledged Interests in the State of New York, the security interests created in favor of the Collateral Agent under the Security Agreement constitutes a valid and perfected security interest in such Pledged Shares and Pledged Interests in favor of the Collateral Agent, and no filings or recordings in the State of New York are required to perfect (or maintain perfection of) such security interests.

SUBSIDIARY GUARANTEE AGREEMENT

SUBSIDIARY GUARANTEE AGREEMENT (together with instruments executed and delivered pursuant to Section 20 hereof, this "Agreement") dated as of July 31, 2000, among each of the subsidiaries of APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower") listed on Schedule I hereto (the "Subsidiary Guarantors"), and CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

Reference is made to the Credit Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among the Borrower, the Lenders (as defined in Article I thereof), CSFB, as administrative agent (in such capacity, the "Administrative Agent"), as collateral agent (in such capacity, the "Collateral Agent") and as issuing bank (in such capacity, the "Issuing Bank") for the Lenders, FIRST UNION NATIONAL BANK as syndication agent (in such capacity, the "Syndication Agent"), and ING (U.S.) CAPITAL LLC as documentation agent (in such capacity, the "Documentation Agent"). Capitalized terms used and not defined herein (including, without limitation, the term "Obligations", as used in Section 1 and elsewhere herein) are used with the meanings assigned to such terms in the Credit Agreement.

The Lenders have agreed to make Loans to the Borrower, and the Issuing Bank has agreed to issue Letters of Credit for the account of the Borrower, in each case pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. Each of the Subsidiary Guarantors is a Subsidiary of the Borrower and acknowledges that it will derive substantial benefit from the making of the Loans by the Lenders to the Borrower, and the issuance of the Letters of Credit by the Issuing Bank for the account of the Borrower. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit are conditioned on, among other things, the execution and delivery by the Subsidiary Guarantors of a Subsidiary Guarantee Agreement in the form hereof. As consideration therefor and in order to induce the Lenders to make Loans and the Issuing Bank to issue Letters of Credit, the Subsidiary Guarantors are willing to execute this Agreement.

Accordingly, the parties hereto agree as follows:

SECTION 1. Subsidiary Guarantee. Each Subsidiary Guarantor unconditionally guarantees, jointly with the other Subsidiary Guarantors and severally, as a primary obligor and not merely as a surety, the due and punctual payment of the Obligations. Each Subsidiary Guarantor waives notice of and hereby consents to any agreements or arrangements whatsoever by the Secured Parties with any other person pertaining to the Obligations, including agreements and arrangements for payment, extension, renewal, subordination, composition, arrangement, discharge or release of the whole or any part of the Obligations, or for the discharge or surrender of any or all security, or for the compromise, whether by way of acceptance of part payment or otherwise, and the same shall in no way impair such Subsidiary Guarantor's liability hereunder.

SECTION 2. Obligations Not Waived. To the fullest extent permitted by applicable law, each Subsidiary Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other person of any of the Obligations, and also waives notice of acceptance of its guarantee, notice of protest for nonpayment, and all other formalities. To the fullest extent permitted by applicable law, the obligations of each Subsidiary Guarantor hereunder shall not be affected by (a) the failure of any Loan Party to assert any

-2-

claim or demand or to enforce or exercise any right or remedy against the Borrower or any other Subsidiary Guarantor under the provisions of the Credit Agreement, any other Loan Document or otherwise, (b) any extension, renewal or increase of or in any of the Obligations, (c) any rescission, waiver, amendment or modification of, or any release from, any of the terms or provisions of this Agreement, the Credit Agreement, any other Loan Document, any guarantee or any other agreement or instrument, including with respect to any other Subsidiary Guarantor under this Agreement, (d) the release of (or the failure to perfect a security interest in) any of the security held by or on behalf of the Collateral Agent or any other Secured Party or (e) the failure or delay of any Secured Party to exercise any right or remedy against any other guarantor of the Obligations; provided, in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor hereunder would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability hereunder, then, notwithstanding any other provision to the contrary, the amount of such

liability shall, without any further action by such Subsidiary Guarantor, any Lender, any Agent or any other person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 3. Security. Each of the Subsidiary Guarantors authorizes the Collateral Agent to (a) take and hold security for the payment of this Subsidiary Guarantee and the Obligations and exchange, enforce, waive and release any such security, (b) apply such security and direct the order or manner of sale thereof as it in its sole discretion may determine subject to the terms of any other Loan Documents and (c) release or substitute any one or more endorsees, other guarantors or other obligors.

SECTION 4. Guarantee of Payment. Each Subsidiary Guarantor further agrees that its guarantee constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any of the security held for payment of the Obligations or to any balance of any deposit account or credit on the books of the Collateral Agent or any other Secured Party in favor of the Borrower or any other person.

SECTION 5. No Discharge or Diminishment of Guarantee. The obligations of each Subsidiary Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense (other than a defense of payment) or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to enforce any remedy under the Credit Agreement, any other Loan Document, any guarantee or any other agreement or instrument, by any amendment, waiver or modification of any provision of the Credit Agreement or any other Loan Document or other agreement or instrument, by any default, failure or delay, wilful or otherwise, in the performance of the Obligations, or by any other act, omission or delay to do any other act that may or might in any manner or to any extent vary the risk of such Subsidiary Guarantor or that would otherwise operate as a discharge of such Subsidiary Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations) or which would impair or eliminate any right of such Subsidiary Guarantor to subrogation.

SECTION 6. Defenses Waived. To the fullest extent permitted by applicable law, each of the Subsidiary Guarantors waives any defense based on or arising out of the unenforceability of the Obliga-

-3-

tions or any part thereof from any cause or the cessation from any cause of the liability (other than the final and indefeasible payment in full in cash of the Obligations) of the Borrower or any other person. The Collateral Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or any other guarantor or exercise any other right or remedy available to them against the Borrower or any other guarantor, without affecting or impairing in any way the liability of any Subsidiary Guarantor hereunder except to the extent the Obligations have been fully, finally and indefeasibly paid in cash. Pursuant to applicable law, each of the Subsidiary Guarantors waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Subsidiary Guarantor against the Borrower or any other guarantor or any security.

SECTION 7. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Collateral Agent or any other Secured Party has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Borrower or any other Loan Party to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Subsidiary Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent or such other Secured Party as designated thereby in cash an amount equal to the unpaid amount of such Obligations then due, together with accrued and unpaid interest and fees on such Obligations. Upon payment by any Subsidiary Guarantor of any sums to the Collateral Agent or any Secured Party as provided above, all rights of such Subsidiary Guarantor against the Borrower arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations. In addition, any indebtedness of the Borrower or any Subsidiary now or hereafter held by any Subsidiary Guarantor is hereby subordinated in right of payment to the prior payment in full of the

Obligations. If any amount shall be paid to any Subsidiary Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness at any time when any Obligation then due and owing has not been paid, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Collateral Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

SECTION 8. Information. Each of the Subsidiary Guarantors assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Subsidiary Guarantor assumes and incurs hereunder and agrees that none of the Collateral Agent or the other Secured Parties will have any duty to advise any of the Subsidiary Guarantors of information known to it or any of them regarding such circumstances or risks.

SECTION 9. Representations and Warranties. Each of the Subsidiary Guarantors represents and warrants as to itself that all representations and warranties relating to it contained in the Credit Agreement are true and correct.

SECTION 10. Termination. The Guarantees made hereunder (a) shall terminate when (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on all Loans, (ii) each payment required to be made under the Credit Agreement in respect of any Letter of Credit, and (iii) all other Obligations then due and owing, have in each case been indefeasibly paid in full and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Exposure has

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been reduced to zero and the Issuing Bank has no further obligation to issue Letters of Credit under the Credit Agreement and (b) shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, on any Obligation is rescinded or repaid in good faith settlement of a pending or threatened avoidance claim or must otherwise be restored by any Secured Party upon the bankruptcy or reorganization of the Company, the Borrower, or any Subsidiary Guarantor or otherwise.

SECTION 11. Binding Effect; Several Agreement; Assignments; Releases. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Subsidiary Guarantors that are contained in this Agreement shall bind and inure to the benefit of each party hereto and their respective successors and assigns. This Agreement shall become effective as to any Subsidiary Guarantor when a counterpart hereof (or a Supplement referred to in Section 20 hereof) executed on behalf of such Subsidiary Guarantor shall have been delivered to the Collateral Agent and a counterpart hereof (or a Supplement referred to in Section 20) shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Subsidiary Guarantor and the Collateral Agent and their respective successors and assigns, and shall inure to the benefit of such Subsidiary Guarantor, the Collateral Agent and the other Secured Parties, and their respective successors and assigns, except that no Subsidiary Guarantor shall have the right to assign its rights or obligations hereunder or any interest herein (and any such attempted assignment shall be void). This Agreement shall be construed as a separate agreement with respect to each Subsidiary Guarantor and may be amended, modified, supplemented, waived or released with respect to any Subsidiary Guarantor without the approval of any other Subsidiary Guarantor and without affecting the obligations of any other Subsidiary Guarantor. The Collateral Agent is hereby expressly authorized to, and agrees upon request of the Borrower it will, release any Subsidiary Guarantor from its obligations hereunder in the event that all the capital stock of such Subsidiary Guarantor shall be sold, transferred or otherwise disposed of to a person that is not an Affiliate of the Borrower in a transaction permitted by Section 6.05 of the Credit Agreement.

SECTION 12. Waivers; Amendment. (a) No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and of the other Secured Parties under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Subsidiary Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Subsidiary Guarantor in any case shall entitle such Subsidiary Guarantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Subsidiary Guarantors to which such waiver, amendment or modification relates and the Collateral Agent with consent required under the Credit Agreement.

SECTION 13. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 14. Notices. All communications and notices hereunder shall be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to each Subsidiary Guarantor shall be given to it at its address set forth in Schedule I with a copy to the Borrower.

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SECTION 15. Survival of Agreement; Severability. (a) All covenants, agreements, representations and warranties made by the Subsidiary Guarantors herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the making by the Lenders of the Loans and the issuance of the Letters of Credit by the Issuing Bank regardless of any investigation made by the Secured Parties or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any other fee or amount payable under this Agreement or any other Loan Document is outstanding and unpaid, the L/C Exposure does not equal zero or the Commitments and the L/C Commitment have not been terminated.

(b) In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 11. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

SECTION 17. Rules of Interpretation. The rules of interpretation specified in Section 1.02 of the Credit Agreement shall be applicable to this Agreement.

SECTION 18. Jurisdiction; Consent to Service of Process. (a) Each Subsidiary Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any Subsidiary Guarantor or its properties in the courts of any jurisdiction.

(b) Each Subsidiary Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 14. Nothing in this Agreement will affect the right of any party to this Agreement to serve process

in any other manner permitted by law.

SECTION 19. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 19.

SECTION 20. Additional Subsidiary Guarantors. Pursuant to Section 5.11 of the Credit Agreement, each Domestic Subsidiary that was not in existence on the date of the Credit Agreement is required to enter into this Agreement as a Subsidiary Guarantor upon becoming a Domestic Subsidiary. Upon execution and delivery after the date hereof by the Collateral Agent and such a Subsidiary of a Supplement in the form of Annex 1, such Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor herein. The execution and delivery of any Supplement adding an additional Subsidiary Guarantor as a party to this Agreement shall not require the consent of any other Subsidiary Guarantor hereunder. The rights and obligations of each Subsidiary Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Subsidiary Guarantor as a party to this Agreement.

SECTION 21. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Secured Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Secured Party to or for the credit or the account of any Subsidiary Guarantor against any or all the obligations of such Subsidiary Guarantor now or hereafter existing under this Agreement and the other Loan Documents held by such Secured Party, irrespective of whether or not the Collateral Agent or any Secured Party shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Secured Party under this Section 21 are in addition to other rights and remedies (including other rights of setoff) which such Secured Party may have.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

EACH OF THE SUBSIDIARIES LISTED
ON SCHEDULE I HERETO

By: _____
Name:
Title:

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

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SCHEDULE 1
to the Subsidiary Guarantee Agreement

<TABLE>
<CAPTION>

Subsidiary Guarantors

Address

<S>

<C>

Actuant Corporation
6100 North Baker Road
Glendale, WI 53209
Attn: Andy Lampereur, Chief Financial Officer
Fax No.: (414) 247-5550

and

Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
Attn: Andrew M. Barnes
Fax No.: (414) 271-3552

</TABLE>

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Annex 1 to the
Subsidiary Guarantee Agreement

SUPPLEMENT NO. dated as of [], to the Subsidiary Guarantee Agreement dated as of July 31, 2000 (the "Subsidiary Guarantee Agreement"), among each of the subsidiaries of APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower") listed on Schedule I thereto (the "Subsidiary Guarantors"), and CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

(A) Reference is made to the Credit Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among the Borrower, the Lenders (as defined in Article I thereof), CSFB, as administrative agent (in such capacity, the "Administrative Agent"), as collateral agent (in such capacity, the "Collateral Agent") and as issuing bank (in such capacity, the "Issuing Bank") for the Lenders FIRST UNION NATIONAL BANK as syndication agent (the "Syndication Agent") and ING (U.S.) CAPITAL LLC as documentation agent (the "Documentation Agent").

(B) Capitalized terms used and not otherwise defined herein are used with the meanings assigned to such terms in the Subsidiary Guarantee Agreement and the Credit Agreement.

(C) The Subsidiary Guarantors have entered into the Subsidiary Guarantee Agreement in order to induce the Lenders to make Loans and the Issuing Bank to issue Letters of Credit. Pursuant to Section 5.11 of the Credit Agreement, each Domestic Subsidiary that was not in existence or not a Domestic Subsidiary on the date of the Credit Agreement is required to enter into the Subsidiary Guarantee Agreement as a Subsidiary Guarantor upon becoming a Domestic Subsidiary. Section 20 of the Subsidiary Guarantee Agreement provides that additional Subsidiaries may become Subsidiary Guarantors under the Subsidiary Guarantee Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary of the Borrower (the "New Subsidiary Guarantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Guarantor under the Subsidiary Guarantee Agreement in order to induce the Lenders to make additional Loans and the Issuing Bank to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Subsidiary Guarantor agree as follows:

SECTION 1. In accordance with Section 20 of the Subsidiary Guarantee Agreement, the New Subsidiary Guarantor by its signature below becomes a Subsidiary Guarantor under the Subsidiary Guarantee Agreement with the same force and effect as if originally named therein as a Subsidiary Guarantor and the New Subsidiary Guarantor hereby (a) agrees to all the terms and provisions of the Subsidiary Guarantee Agreement applicable to it as a Subsidiary Guarantor thereunder (including its guarantee of the Obligations) and (b) represents and warrants that the representations and warranties made by it as a Subsidiary Guarantor thereunder are true and correct on and as of the date hereof. Each reference to a "Subsidiary Guarantor" in the Subsidiary Guarantee Agreement shall be deemed to include the New Subsidiary Guarantor.

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SECTION 2. The New Subsidiary Guarantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Subsidiary Guarantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Supplement.

SECTION 4. Except as expressly supplemented hereby, the Subsidiary Guarantee Agreement shall remain in full force and effect .

SECTION 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Subsidiary Guarantee Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision hereof in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 14 of the Subsidiary Guarantee Agreement. All communications and notices hereunder to the New Subsidiary Guarantor shall be given to it at the address set forth under its signature below, with a copy to the Borrower.

SECTION 8. The New Subsidiary Guarantor agrees to reimburse the Collateral Agent for its out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent.

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IN WITNESS WHEREOF, the New Subsidiary Guarantor and the Collateral Agent have duly executed this Supplement to the Subsidiary Guarantee Agreement as of the day and year first above written.

[Name Of New Subsidiary Guarantor],

By: _____
Name:
Title:
Address:

CREDIT SUISSE FIRST BOSTON,
as Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

OFFICERS' CERTIFICATE OF APPLIED POWER INC.
(doing business as Actuant Corporation)

Pursuant to Section 4.02(d) of the Credit Agreement

I, the undersigned, Andrew Lampereur, as authorized person - financial leader of Applied Power Inc., a Wisconsin corporation (doing business as Actuant Corporation) (the "Company"), pursuant to Section 4.02(d) of the Credit Agreement dated as of July 31, 2000 among the Company, the Lenders, Credit Suisse First Boston, as Lead Arranger, Collateral Agent and Administrative Agent, First Union National Bank, as Syndication Agent, and ING (U.S.) Capital LLC, as Documentation Agent (the "Credit Agreement" capitalized terms used herein without definition shall have the meanings assigned to such terms in the Credit Agreement), does hereby certify, in my capacity as an officer of the Company, and not individually, on behalf of the Company, that:

(a) The representations and warranties set forth in Article III of the Credit Agreement or in any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(b) The Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth in the Credit Agreement and in each other Loan Document on its part to be observed or performed, and at the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

(c) There has not occurred any event or events, adverse condition or change in or affecting the Loan Parties, or any of them, that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

IN WITNESS WHEREOF, the undersigned has hereunto signed his name this 31st day of July, 2000.

By: _____
Name: Andrew Lampereur
Title: Authorized Person

CREDIT SUISSE FIRST BOSTON
Eleven Madison Avenue
New York, NY 10010

APPLIED POWER INC.
(doing business as Actuant Corporation)
6100 North Baker Road
Glendale, WI 53209

July 31, 2000

Letter of Credit Fee Letter

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated the date hereof (the "Credit Agreement") among Credit Suisse First Boston as Lead Arranger and Administrative Agent ("CSFB"), the other Agents and Lenders named therein and Applied Power Inc. (doing business as Actuant Corporation) ("Actuant" or "you"). Terms used but not defined in this fee letter agreement (the "Fee Letter") have the meanings assigned thereto in the Credit Agreement.

You agree to pay to the Issuing Bank with respect to each Letter of Credit, on the last Business Day of March, June, September and December of each year and on the L/C Maturity Date, a fronting fee equal to (x) in the case of a Letter of Credit issued by Credit Suisse First Boston as the Issuing Bank, 0.25% per annum on the aggregate outstanding face amount of such Letter of Credit and (y) in the case of a Letter of Credit issued by any Lender other than Credit Suisse First Boston as the Issuing Bank, such amount as shall have been agreed upon by you and such Lender.

You agree that this Fee Letter is a Loan Document and your obligations hereunder an Obligation under the Credit Agreement.

This Fee Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Fee Letter by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Fee Letter.

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If the foregoing correctly sets forth our understanding, please indicate your acceptance of the terms hereof by signing in the appropriate space below and returning to us the enclosed duplicate originals hereof, whereupon this Fee Letter shall become a binding agreement between us.

Very truly yours,

CREDIT SUISSE FIRST BOSTON

By: _____
Name:
Title:

By: _____
Name:
Title:

Accepted and agreed to as of the date first written above by:

APPLIED POWER INC.

By: _____
Name:
Title:

INDEMNITY, SUBROGATION AND CONTRIBUTION AGREEMENT

INDEMNITY, SUBROGATION and CONTRIBUTION AGREEMENT (together with instruments executed and delivered pursuant to Section 12, this "Agreement") dated as of July 31, 2000, among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Company"), each subsidiary of the Company listed on Schedule I hereto (the "Subsidiary Guarantors") and CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined herein).

Reference is made to (a) the Credit Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Company, the Lenders (as defined in Article I thereof), CSFB as administrative agent (in such capacity, the "Administrative Agent"), as collateral agent (in such capacity, the "Collateral Agent") and as issuing bank (in such capacity, the "Issuing Bank") for the Lenders, FIRST UNION NATIONAL BANK as syndication agent (in such capacity, the "Syndication Agent"), and ING (U.S.) CAPITAL LLC as documentation agent (in such capacity, the "Documentation Agent"), (b) the Subsidiary Guarantee Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Subsidiary Guarantee Agreement"), among the Subsidiary Guarantors and the Collateral Agent, and (c) the Security Documents referred to in the Credit Agreement. Capitalized terms used herein and not defined herein are used with the meanings assigned to such terms in the Credit Agreement.

The Lenders have agreed to make Loans to the Borrower, and the Issuing Bank has agreed to issue Letters of Credit for the account of the Borrower, in each case pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. The Subsidiary Guarantors have guaranteed such Loans and the other Obligations (as defined in the Credit Agreement) of the Borrower under the Credit Agreement pursuant to the Credit Agreement and the Subsidiary Guarantee Agreement and have granted Liens on and security interests in certain of their assets pursuant to the Security Documents to secure the Obligations. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit are conditioned on, among other things, the execution and delivery by the Parents and the Subsidiary Guarantors of an agreement in the form hereof.

Accordingly, the Borrower, each Subsidiary Guarantor and the Collateral Agent agree as follows:

SECTION 1. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Subsidiary Guarantors may have under applicable law (but subject to Section 3), the Borrower agrees that (a) in the event a payment shall be made by any Subsidiary Guarantor under the Subsidiary Guarantee Agreement, the Borrower shall indemnify such Subsidiary Guarantor for the full amount of such payment and, until such indemnification obligation shall have been satisfied, such Subsidiary Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Subsidiary Guarantor shall be sold pursuant to any Security Document to satisfy a claim of any Secured Party, the Borrower shall indemnify such Subsidiary Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

SECTION 2. Contribution and Subrogation. Each Subsidiary Guarantor (a "Contributing Guarantor") agrees (subject to Section 3) that, in the event a payment shall be made by any other Subsidiary Guar-

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antor under the Subsidiary Guarantee Agreement or assets of any other Subsidiary Guarantor shall be sold pursuant to any Security Document to satisfy a claim of any Secured Party, and, in either case, such other Subsidiary Guarantor (the "Claiming Guarantor") shall not have been fully indemnified by the Borrower as provided in Section 1, the Contributing Guarantor shall, to the extent the Claiming Guarantor shall not have been so indemnified by the Borrower, indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Guarantor on the date hereof (or, in the case of any Subsidiary Guarantor becoming a party hereto pursuant to Section 12, the date of the Supplement hereto executed and delivered by such Subsidiary Guarantor) and the denominator shall be the aggregate net worth of all the Subsidiary Guarantors on the date hereof (or, in the case of any Subsidiary Guarantor becoming a party hereto pursuant to Section 12, the date of the Supplement hereto executed and delivered by such Subsidiary Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 2 shall be subrogated to the rights of such Claiming Guarantor under Section 1 to the extent of such payment.

SECTION 3. Subordination. Notwithstanding any provision of this Agreement to the contrary, all rights of the Subsidiary Guarantors under Sections 1 and 2 and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Obligations. No failure on the part of either the Borrower or any Subsidiary Guarantor to make the payments required by Sections 1 and 2 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Subsidiary Guarantor with respect to its obligations hereunder, and each Subsidiary Guarantor shall remain liable for the full amount of the obligations of such Subsidiary Guarantor hereunder.

SECTION 4. Termination. This Agreement shall survive and be in full force and effect so long as the Subsidiary Guarantee Agreement has not been terminated, and shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Secured Party upon the bankruptcy or reorganization of either the Borrower, any Subsidiary Guarantor or otherwise.

SECTION 5. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. No Waiver, Amendment. (a) No failure on the part of the Collateral Agent or any Subsidiary Guarantor to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy by the Collateral Agent or any Subsidiary Guarantor preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law. None of the Collateral Agent and the Subsidiary Guarantors shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such parties.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Borrower, the Subsidiary Guarantors and the Collateral Agent, with any consent required under the Credit Agreement.

SECTION 7. Notices. All communications and notices hereunder shall be in writing and given as provided in the Credit Agreement or the Subsidiary Guarantee Agreement, as applicable, and addressed as specified therein.

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SECTION 8. Binding Agreement, Assignments. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the parties that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns. Neither the Borrower nor any Subsidiary Guarantor may assign or transfer any of its rights or obligations hereunder (and any such attempted assignment or transfer shall be void) without the prior written consent of the Required Lenders. Notwithstanding the foregoing, at the time any Subsidiary Guarantor is released from its obligations under the Subsidiary Guarantee Agreement in accordance with the Subsidiary Guarantee Agreement and the Credit Agreement, such Subsidiary Guarantor will cease to have any rights or obligations under this Agreement.

SECTION 9. Survival of Agreement, Severability. (a) All covenants and agreements made by the Borrower and each Subsidiary Guarantor herein and in the certificates or other instruments prepared or delivered in connection with this Agreement or the other Loan Documents shall be considered to have been relied upon by the Collateral Agent, the other Secured Parties and each Subsidiary Guarantor, shall survive the making by the Lenders of the Loans and the issuance of the Letters of Credit by the Issuing Bank and shall continue in full force and effect as long as the principal of or any accrued interest on any Loans or any other fee or amount payable under the Credit Agreement, this Agreement or any of the other Loan Documents is outstanding and unpaid, the L/C Exposure does not equal zero or the Commitments have not been terminated.

(b) In case any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall be effective with respect to any Subsidiary Guarantor when a counterpart bearing the signature of such Subsidiary Guarantor shall have been delivered to the Collateral Agent. Delivery of an

SUPPLEMENT NO. (this "Supplement") dated as of [], 2000 to the Indemnity, Subrogation and Contribution Agreement dated as of July 31, 2000 (as the same may be amended, supplemented or otherwise modified from time to time, the "Indemnity, Subrogation and Contribution Agreement"), among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower"), each subsidiary of the Company listed on Schedule I thereto (the "Subsidiary Guarantors") and CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York Branch ("CSFB"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined herein).

(A) Reference is made to (a) the Credit Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Lenders (as defined in Article I thereof, CSFB as administrative agent (in such capacity, the "Administrative Agent"), as collateral agent (in such capacity, the "Collateral Agent") and as issuing bank (in such capacity, the "Issuing Bank") for the Lenders, FIRST UNION NATIONAL BANK as syndication agent (the "Syndication Agent"), and ING (U.S.) CAPITAL LLC as documentation agent (in such capacity, the "Documentation Agent"), (b) the Subsidiary Guarantee Agreement dated as of July 31, 2000 (as amended, supplemented or otherwise modified from time to time, the "Subsidiary Guarantee Agreement"), among the Subsidiary Guarantors and the Collateral Agent, and (c) the Security Documents referred to in the Credit Agreement.

(B) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indemnity, Subrogation and Contribution Agreement and the Credit Agreement.

(C) The Borrower and the Subsidiary Guarantors have entered into the Indemnity, Subrogation and Contribution Agreement in order to induce the Lenders to make Loans and the Issuing Bank to issue Letters of Credit. Subject to the provisions of to Section 5.11(b) of the Credit Agreement, each Domestic Subsidiary that was not in existence or was not such a Subsidiary on the date of the Credit Agreement is required to enter into the Indemnity, Subrogation and Contribution Agreement as a Subsidiary Guarantor upon becoming such a Subsidiary. Section 12 of the Indemnity, Subrogation and Contribution Agreement provides that additional Subsidiaries may become Subsidiary Guarantors under the Indemnity, Subrogation and Contribution Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Guarantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Subsidiary Guarantor under the Indemnity, Subrogation and Contribution Agreement in order to induce the Lenders to make additional Loans and the Issuing Bank to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Guarantor agree as follows:

SECTION 1. In accordance with Section 12 of the Indemnity, Subrogation and Contribution Agreement, the New Guarantor by its signature below becomes a Subsidiary Guarantor under the Indemnity, Subrogation and Contribution Agreement with the same force and effect as if originally named therein as a Subsidiary Guarantor and the New Guarantor hereby agrees to all the terms and provisions of the Indemnity, Subrogation and Contribution Agreement applicable to it as a Subsidiary Guarantor thereunder. Each reference to a "Sub-

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sidary Guarantor" in the Indemnity, Subrogation and Contribution Agreement shall be deemed to include the New Guarantor.

SECTION 2. The New Guarantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Guarantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. Except as expressly supplemented hereby, the Indemnity, Subrogation and Contribution Agreement shall remain in full force and effect .

SECTION 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this

Supplement should be held invalid, illegal or unenforceable in any respect, neither party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Indemnity, Subrogation and Contribution Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 7 of the Indemnity, Subrogation and Contribution Agreement. All communications and notices hereunder to the New Guarantor shall be given to it at the address set forth under its signature.

SECTION 8. The New Guarantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

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IN WITNESS WHEREOF, the New Guarantor and the Collateral Agent have duly executed this Supplement to the Indemnity, Subrogation and Contribution Agreement as of the day and year first above written.

[Name Of New Guarantor]

By: _____
Name:
Title:
Address:

CREDIT SUISSE FIRST BOSTON, as
Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

=====

CREDIT AGREEMENT

dated as of July 31, 2000

among

APPLIED POWER INC.
(doing business as Actuant Corporation),

THE LENDERS NAMED HEREIN

and

CREDIT SUISSE FIRST BOSTON,

as Lead Arranger, Collateral Agent and Administrative Agent

FIRST UNION NATIONAL BANK

Syndication Agent

and

ING (U.S.) CAPITAL LLC

Documentation Agent

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CREDIT AGREEMENT dated as of July 31, 2000, among APPLIED POWER INC., a Wisconsin corporation (doing business as Actuant Corporation) (the "Borrower" or the "Company"), the Lenders (as defined in Article I), CREDIT SUISSE FIRST BOSTON, a bank organized under the laws of Switzerland, acting through its New York branch, as swingline lender (in such capacity, the "Swingline Lender"), as an Issuing Bank (as defined in Article I), and as administrative agent (in such capacity, the "Administrative Agent") and as collateral agent (in such capacity, the "Collateral Agent") for the Lenders, FIRST UNION NATIONAL BANK, as syndication agent (in such capacity, the "Syndication Agent"), ING (U.S.) CAPITAL LLC, as documentation agent, (in such capacity, the "Documentation Agent").

Pursuant to the Spin-Off (such term and each other capitalized term used but not defined herein having the meaning given it in Article I), the Borrower intends to spin-off the Borrower's wholly-owned subsidiary, APW Ltd. and pursuant to the Divestitures, the Borrower intends to sell certain assets, including the capital stock of certain subsidiaries, and, in connection with such Spin-Off and Divestitures, the Borrower intends to (i) consummate the Tender Offer for the Existing Senior Subordinated Notes and (ii) pay other fees and expenses, the aggregate cost of which will be approximately \$450.0 million.

The Borrower has requested the Lenders to extend credit in the form of (a) Tranche A Term Loans on the Closing Date, in an aggregate principal amount not in excess of \$115,000,000 (including up to a maximum Dollar Equivalent of \$30,000,000 thereof in an Alternative Currency (as defined below)), (b) Tranche B Term Loans on the Closing Date, in an aggregate principal amount not in excess of \$125,000,000, and (c) Revolving Loans at any time and from time to time prior to the Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not in excess of \$100,000,000. The Borrower has requested the Swingline Lender to extend credit, at any time and from time to time prior to the Revolving Credit Maturity Date, in the form of Swingline Loans in an aggregate principal amount at any time outstanding not in excess of \$5,000,000. The Borrower has requested the Issuing Bank to issue letters of credit, in an aggregate face amount at any time outstanding not in excess of \$17,000,000, to support payment obligations incurred in the ordinary course of business by the Borrower and its Subsidiaries. The proceeds of the Term Loans and the Revolving Loans are to be used, together with the proceeds of the New Senior Subordinated Notes, solely (i) to consummate the Spin-Off, Divestitures and Tender Offer and (ii) to pay related fees and expenses. The remaining proceeds of the Revolving Loans and the Swingline Loans are to be used solely for general corporate purposes.

The Lenders are willing to extend such credit to the Borrower and the Issuing Bank is willing to issue letters of credit for the account of the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"ABR Loan" shall mean any ABR Term Loan or ABR Revolving Loan.

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"ABR Revolving Loan" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"ABR Term Borrowing" shall mean a Borrowing comprised of ABR Term Loans.

"ABR Term Loan" shall mean any Term Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"Accounts Receivable Facility" shall mean any credit facility or conditional sale contract or similar arrangement providing financing secured directly or indirectly only by the accounts receivable of the Borrower or the

Subsidiaries, on terms reasonably acceptable to the Required Lenders.

"Additional Collateral" shall have the meaning assigned to such term in Section 5.11 hereof.

"Additional Lender" shall have the meaning assigned to such term in Section 2.25 hereof.

"Additional Loan Commitment" shall have the meaning assigned to such term in Section 2.25 hereof.

"Adjusted EURIBOR" means, with respect to any EURIBOR Loans for any Interest Period, an interest rate per annum equal to the product of (a) EURIBOR in effect for such Interest Period and (b) Statutory Reserves.

"Adjusted Eurocurrency Rate" means Adjusted LIBOR or Adjusted EURIBOR.

"Adjusted LIBOR" shall mean, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum equal to the product of (a) the LIBOR in effect for such Interest Period and (b) Statutory Reserves.

"Administrative Agent Fees" shall have the meaning assigned to such term in Section 2.05(b).

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as may be supplied from time to time by the Administrative Agent.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; provided, however, that for purposes of Section 6.07, the term "Affiliate" shall also include any person that directly or indirectly owns more than 5% of any class of capital stock of the person specified or that is an officer or director of the person specified.

"Aggregate Revolving Credit Exposure" shall mean the aggregate amount of the Lenders' Revolving Credit Exposures.

"Agreement" shall mean this Credit Agreement as amended from time to time.

"Agreement Currency" shall have the meaning assigned to such term in Section 9.16(b).

"Alternate Base Rate" shall mean, for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Ef-

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fective Rate in effect on such day plus 1/2 of 1%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively. The term "Prime Rate" shall mean the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective on the date such change is publicly announced as being effective. The term "Federal Funds Effective Rate" shall mean, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Alternative Currency" means Euros and any other foreign currency which is agreed to by the Borrower and the Lenders.

"Alternative Currency Borrowing" means a Borrowing comprised of Alternative Currency Loans.

"Alternative Currency Equivalent" means, on any date of determination, with respect to any amount denominated in Dollars, the equivalent in any Alternative Currency of such amount, determined by Administrative Agent pursuant to Section 1.04 using the applicable Exchange Rate with respect to such currency at the time in effect.

"Alternative Currency Exposure" means, at any time with respect to any Alternative Currency, the sum of the Dollar Equivalent of the aggregate principal amount of all outstanding Loans that are denominated in such Alternative Currency at such time.

"Alternative Currency Loan" means any Loan denominated in an Alternative Currency. Each Alternative Currency Loan must be a Eurocurrency Rate Loan.

"Alternative Currency Tranche A Term Loan" means a Tranche A Term Loan denominated in an Alternative Currency.

"Applicable Percentage" shall mean, for any day, with respect to any Eurocurrency Loan or ABR Loan, as the case may be, the applicable percentage set forth below under the caption "Eurocurrency Spread--Tranche A Term Loans and Revolving Loans", "Eurocurrency Spread--Tranche B Term Loans" or "ABR Spread--Tranche A Term Loans and Revolving Loans" or "ABR Spread--Tranche B Term Loans", and "Unused Revolving Credit Commitment" as the case may be, based upon the Leverage Ratio as of the relevant date of determination:

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Unused Leverage Revolving Credit Ratio Commitment	Eurocurrency Spread		ABR Spread	
	Tranche A Term Loans and Revolving Loans	Tranche B Term Loans	Tranche A Term Loans and Revolving Loans	Tranche B Term Loans
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Unused Leverage Revolving Credit Ratio Commitment	Eurocurrency Spread		ABR Spread	
	Tranche A Term Loans and Revolving Loans	Tranche B Term Loans	Tranche A Term Loans and Revolving Loans	Tranche B Term Loans
Category 1 0.50%	3.00%	4.00%	2.00%	3.00%
Equal to or greater than 4.25 to 1.00				
Category 2 0.50%	2.75%	3.75%	1.75%	2.75%
Equal to or greater than 3.50 to 1.00, but less than 4.25 to 1.00				
Category 3 0.50%	2.50%	3.50%	1.50%	2.50%
Equal to or greater than 3.00 to 1.00, but less than 3.50 to 1.00				
Category 4 0.375%	2.25%	3.50%	1.25%	2.50%
Equal to or greater than 2.50 to 1.00, but less than 3.00 to 1.00				
Category 5 0.375%	2.00%	3.50%	1.00%	2.50%

to EURIBOR, the term "Business Day" shall also exclude any day which is not a TARGET Settlement Day.

"Capital Expenditures" shall mean, with respect to any person, all expenditures by such person that should be capitalized in accordance with GAAP, including all such expenditures with respect to fixed or capital assets (including expenditures for maintenance and repairs that should be capitalized in accordance with GAAP) and the amount of Capital Lease Obligations incurred by such person.

"Capital Lease Obligations" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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"Cash Equivalents" shall mean, as to any person, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person, (b) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any State thereof or the District of Columbia, having capital, surplus and undivided profits aggregating in excess of \$500,000,000 (or the foreign currency equivalent thereof), with maturities of not more than one year from the date of acquisition by such person, (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, (d) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by Standard & Poor's Rating Service or at least P-1 or the equivalent thereof by Moody's Investors Service, Inc., and in each case maturing not more than one year after the date of acquisition by such person, (e) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above and (f) demand deposit accounts maintained in the ordinary course of business.

"Casualty Event" shall mean, with respect to any Property (including Real Property) of the Borrower or any of the Subsidiaries, any loss of title with respect to Real Property or any Destruction or Taking (including by any Governmental Authority) of such Property (including Real Property) for which the Borrower or any of the Subsidiaries receives insurance proceeds or proceeds of a condemnation award or other compensation.

"Change in Control" shall be deemed to have occurred if (a) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (a) such person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Borrower (for the purpose of this clause (a) a Person shall be deemed to beneficially own the Voting Stock of a corporation that is beneficially owned (as defined above) by another corporation (a "parent corporation") if such Person beneficially owns (as defined above) at least 50% of the aggregate voting power of all classes of Voting Stock of such parent corporation); (b) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Borrower was approved by a vote of 66-2/3% of the directors of the Borrower then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office; (c) the adoption of a plan relating to the liquidation or dissolution of the Borrower; or (d) the merger or consolidation of the Borrower with or into another Person or the merger of another Person with or into the Borrower, or the sale of all or substantially all the assets of the Company to another Person (notwithstanding compliance with the provisions of Section 6.05), and, in the case of any such merger or consolidation, the securities of the Company that are outstanding immediately prior to such transaction and which represent 100% of the aggregate voting power of the Voting Stock of the Borrower are changed into or exchanged for cash, securities or property, unless pursuant to such transaction such securities are changed into or exchanged for, in addition to any other consideration, securities of the surviving corporation that represent immediately after such transaction, at least a majority of the aggregate voting power of the Voting Stock of the surviving corporation.

"Closing Date" shall mean the date on which the first Credit Event shall have occurred.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

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"Collateral" shall mean all of the Pledged Collateral, the Mortgaged Property and all other Property of whatever kind and nature pledged as collateral under any Security Document.

"Collateral Account" shall have the meaning assigned to such term in the Security Agreement.

"Collateral Agent" shall have the meaning assigned to such term in the preamble hereof.

"Commitment" shall mean, with respect to any Lender, such Lender's Revolving Credit Commitment (including any Swingline Commitment), or Term Loan Commitment.

"Commitment Fee" shall have the meaning assigned to such term in Section 2.05(a).

"Company" shall have the meaning assigned to such term in the preamble hereof.

"Confidential Information Memorandum" shall mean the Confidential Information Memorandum of the Borrower dated July 21, 2000.

"Consolidated Current Assets" shall mean, at any time, the consolidated current assets (other than cash and Cash Equivalents) of the Borrower and its consolidated Subsidiaries.

"Consolidated Current Liabilities" shall mean, at any time, the consolidated current liabilities of the Borrower and its consolidated Subsidiaries at such time, but excluding (a) the current portion of any Indebtedness under this Agreement and any other long-term Indebtedness which would otherwise be included therein, (b) accrued but unpaid interest with respect to the Indebtedness described in clause (a), and (c) the current portion of Indebtedness constituting Capital Lease Obligations.

"Consolidated EBITDA" shall mean, for any period, the sum of the amounts for such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense, (iii) provision for taxes based on income, (iv) total depreciation expense, and (v) total amortization expense, in each case without giving effect to any extraordinary gains or losses or gains or losses from sales of assets other than inventory sold in the ordinary course of business; provided, however, that amounts in any such period in respect of (v) any noncash charges associated with the sales of assets set forth on Schedule 2.13(b) hereto, (w) the write-off of deferred financing fees and any premium actually paid in connection with the Transactions, (x) contract termination costs actually paid in connection with the Transactions, (y) restructuring charges actually paid in connection with the Transactions, and (z) corporate reorganization expenses actually paid in connection with the Transactions shall be added to Consolidated EBITDA for such period; provided, further, however, that (A) for any such period prior to the Closing Date, Consolidated EBITDA shall be calculated on a pro forma basis for the Divestitures and Spin-Off; and (B) in the case of any determination that includes one or more fiscal quarters ending prior to the Closing Date, an amount equal to the actual general corporate expenses for each such fiscal quarter in excess of \$1.25 million for each such fiscal quarter shall be added to Consolidated EBITDA, all of the foregoing as determined on a consolidated basis for the Borrower and the Subsidiaries in conformity with GAAP.

"Consolidated Fixed Charge Coverage Ratio" for any period shall mean the ratio of the excess of Consolidated EBITDA over Capital Expenditures to Consolidated Fixed Charges for such period.

"Consolidated Fixed Charges" for any period shall mean the sum, without duplication, of (a) the cash portion of Consolidated Interest Expense for such period, (b) income taxes expense for such period and (c) the scheduled principal amount of all amortization payments on all Indebtedness (including the principal component

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of all Capital Lease Obligations) of the Borrower and its Subsidiaries for such period (as determined on the first day of the respective period).

"Consolidated Indebtedness" shall mean, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness (but including in any event the then outstanding principal amount of all Loans, all New Senior Subordinated Notes and all Capital Lease Obligations) of the Borrower and the Subsidiaries on a consolidated basis as determined in accordance with GAAP; provided that Indebtedness outstanding pursuant to trade payables and accrued expenses incurred in the ordinary course of business shall be excluded in

determining Consolidated Indebtedness.

"Consolidated Interest Coverage Ratio" shall mean, for any period, the ratio of (i) Consolidated EBITDA for such period to (ii) Consolidated Interest Expense for such period.

"Consolidated Interest Expense" shall mean, for any period, the total consolidated interest expense of the Borrower and its consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof) plus, without duplication, the portion of Capital Lease Obligations of the Borrower and its consolidated Subsidiaries representing the interest factor for such period.

"Consolidated Net Income" shall mean, for any period, the consolidated net after tax income of the Borrower and its consolidated Subsidiaries (other than net income of Subsidiaries that are not Wholly Owned Subsidiaries to the extent such income for such period has not been paid to the Borrower by dividend or otherwise) determined in accordance with GAAP.

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

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

"Credit Event" shall have the meaning assigned to such term in Section 4.01.

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"Default" shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

"Designated Senior Indebtedness" shall have the meaning given such term in the New Senior Subordinated Note Indenture.

"Destruction" shall mean any and all damage to, or loss or destruction of, any Property of the Borrower or any of the Subsidiaries or any part thereof.

"Disqualified Capital Stock" shall mean any capital stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Tranche B Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any capital stock referred to in (a) above, in each case at any time prior to the first anniversary of the Tranche B Maturity Date.

"Divestitures" shall mean the sale by the Borrower of its vibration control business, known as Barry Controls, and its aerospace cargo products business, known as Air Cargo.

"Dividend" with respect to any person shall mean that such person has declared or paid a dividend or returned any equity capital to its stockholders or authorized or made any other distribution, payment or delivery of property (other than common stock of such person) or cash to its stockholders as such, or

redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its capital stock outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the capital stock of such person outstanding on or after the Closing Date (or any options or warrants issued by such person with respect to its capital stock). Without limiting the foregoing, "Dividends" with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

"Dollar Borrowing" means a Borrowing comprised of Dollar Loans.

"Dollar Equivalent" means, on any date of determination, with respect to any amount denominated in any currency other than Dollars, the equivalent in dollars of such amount, determined by Administrative Agent pursuant to Section 1.04 using the applicable Exchange Rate with respect to such currency at the time in effect.

"Dollar Loan" means any Loan denominated in dollars.

"Dollars" or "\$" shall mean lawful money of the United States of America.

"Domestic Subsidiaries" shall mean all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof, the District of Columbia, the United States Virgin Islands or Puerto Rico.

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"EC Treaty" means the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended by the Treaty on European Union (signed in Maastricht on February 7, 1992).

"environment" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

"Environmental Claim" shall mean any written accusation, allegation, notice of violation, claim, demand, order, directive, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages, injunctive or equitable relief, personal injury (including sickness, disease or death), Remedial Action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the environment caused by any Hazardous Material, or for fines, penalties or restrictions, resulting from or based upon (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases), (b) exposure to any Hazardous Material, (c) the presence, use, handling, transportation, storage, treatment or disposal of any Hazardous Material or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

"Environmental Law" shall mean the common law and any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of or damages to natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters now or hereafter in effect, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. (S) 9601 et seq. (collectively "CERCLA"), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. (S) 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. (S) 1251 et seq., the Clean Air Act of 1970, as amended 42 U.S.C. (S) 7401 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. (S) 2601 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. (S) 651 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. (S) 11001 et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. (S) 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. (S) 5101 et seq., and any similar or implementing state, local or foreign law, and all amendments or regulations promulgated under any of the foregoing.

"Environmental Permit" shall mean any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

"Equity Interest" shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting), of capital of such person, including, if such person is a partnership, partnership interests

(whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, whether outstanding on the date hereof or issued hereafter.

"Equity Offering" shall mean any offering of capital stock of, and by, the Borrower other than (i) an issuance made as consideration for an acquisition permitted pursuant to Section 6.04(j) and (ii) issuances pursuant to employee stock ownership plans of the Borrower or the Subsidiaries.

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"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (g) the receipt by the Borrower or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; and (h) any Foreign Benefit Event.

"EURIBOR" means, with respect to any EURIBOR Borrowing for any Interest Period (i) the rate per annum as determined by Administrative Agent at approximately 11:00 a.m. Brussels time on the date which is two Business Days prior to the beginning of such Interest Period by reference to the Reuters Page EURIBOR-01 for deposits in Euros for a period equal to such Interest Period or (ii) to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, "EURIBOR" shall be the interest rate per annum determined by Administrative Agent equal to the rate per annum at which deposits in Euros are offered for such Interest Period by Administrative Agent in the Euro-zone interbank market at approximately 11:00 a.m., Brussels time, on the date which is two Business Days prior to the beginning of such Interest Period.

"EURIBOR Borrowing" means any Borrowing consisting of EURIBOR Term Loans.

"EURIBOR Term Loan" means a Tranche A Term Loan bearing interest at rates determined by reference to Adjusted EURIBOR as provided in Section 2.06(c).

"Euro" and "Euro" mean the lawful currency of the member states (as such term is used in Council Regulation (EC) No. 974/98) of the European Union that adopt the single currency in accordance with the EC Treaty.

"Eurocurrency Rate" means EURIBOR or LIBOR.

"Eurocurrency Rate Borrowing" means a Borrowing comprised of Eurocurrency Rate Loans.

"Eurocurrency Rate Loans" means Loans bearing interest at rates determined by reference to an Adjusted Eurocurrency Rate as provided in the definition of Applicable Percentage.

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"Eurocurrency Term Loans" shall mean Term Loans bearing interest at rates determined by reference to an Adjusted Eurocurrency Rate as provided in the definition of Applicable Percentage.

"Euro-zone" means the region comprised of member states of the European Union that adopt the single currency in accordance with the EC Treaty.

"Event of Default" shall have the meaning assigned to such term in Article VII.

"Excess Cash Flow" shall mean, for any fiscal year of the Borrower, the excess of (a) the sum, without duplication, of (i) Consolidated EBITDA for such fiscal year, (ii) extraordinary cash receipts of the Borrower and its consolidated Subsidiaries, if any, during such fiscal year and not included in Consolidated EBITDA and (iii) reductions to noncash working capital of the Borrower and its consolidated Subsidiaries for such fiscal year (i.e., the decrease, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year) over (b) the sum, without duplication, of (i) the amount of any cash income taxes payable by the Borrower and its consolidated Subsidiaries with respect to such fiscal year, (ii) scheduled cash interest paid (net of cash interest received) by the Borrower and its consolidated Subsidiaries during such fiscal year, (iii) Capital Expenditures made in cash in accordance with Section 6.08 during such fiscal year, except to the extent financed with the proceeds of Indebtedness, Net Insurance Proceeds or Net Condemnation Awards, (iv) scheduled permanent repayments of Indebtedness made by the Borrower and its consolidated Subsidiaries during such fiscal year, (v) mandatory prepayments of the Revolving Loans during such fiscal year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of the Revolving Loans, and (vi) additions to noncash working capital for such fiscal year (i.e., the increase, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year); provided that, to the extent otherwise included therein, the Net Cash Proceeds of Asset Sales and dispositions resulting in Net Insurance Proceeds or Net Condemnation Awards shall be excluded from the calculation of Excess Cash Flow.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Exchange Rate" means, on any day, with respect to any currency other than dollars (for purposes of determining the Dollar Equivalent) or any Alternative Currency (for purposes of determining the Alternative Currency Equivalent with respect to dollars or another Alternative Currency, as the case may be), the rate (for spot delivery) at which such currency may be exchanged into dollars or the applicable Alternative Currency, as the case may be, as set forth at approximately 11:00 a.m., New York City time, on such date as the Administrative Agent shall have received a Borrowing Request on the applicable Bloomberg Key Cross Currency Rates Page. In the event that any such rate does not appear on any Bloomberg Key Cross Currency Rates Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates reasonably selected by Administrative Agent for such purpose, or, at the reasonable discretion of Administrative Agent, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., local time, on such date for the purchase of dollars or the applicable Alternative Currency, as the case may be, for delivery two Business Days (or such other period as is customary in the relevant market) later; provided that, if at the time of any such determination, for any reason, no such spot rate is being quoted, Administrative Agent may use any other reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder,

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(a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.21(a)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.20(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.20(a).

"Existing Senior Subordinated Notes" shall mean the Borrower's 8-3/4% Senior Subordinated Notes due 2009 issued pursuant to the indenture dated as of April 1, 1999, between the Borrower and The First National Bank of Chicago, as trustee.

"Fee Letter" shall mean the Senior Secured Credit Facilities Fee Letter dated May 30, 2000, between the Borrower and the Agents.

"Fees" shall mean the Commitment Fees, the Administrative Agent's Fees, the L/C Participation Fees and the Issuing Bank Fees.

"Financial Officer" of any corporation shall mean the chief financial officer, principal accounting officer, Treasurer or Controller of such corporation.

"fiscal quarter" shall mean a quarter ending on the last day of each February, May, August and November.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Pension Plan" shall mean any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Foreign Subsidiary" shall mean any Subsidiary that is not a Domestic Subsidiary.

"GAAP" shall mean generally accepted accounting principles applied on a consistent basis.

"Governmental Authority" shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Governmental Real Property Disclosure Requirements" shall mean any Requirement of Law of any Governmental Authority requiring notification of the buyer or mortgagee of Real Property, or notification, registration or filing to or with any Governmental Authority, prior to the sale or mortgage of any Real Property or

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transfer of control of an establishment, of the actual or threatened presence or release into the environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property to be sold or the establishment for which control is to be transferred.

"Granting Lender" has the meaning specified in Section 9.04(i).

"Hazardous Materials" shall mean all explosive or radioactive substances or wastes, hazardous or toxic substances or wastes, pollutants, solid, liquid or gaseous wastes, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls ("PCBs") or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances, materials or wastes of any nature or form regulated pursuant to any Environmental Law.

"Indebtedness" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid, (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person other than customary reservations of title under agreements with suppliers or lessors entered into in the ordinary course of business, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Contingent Obligations of such person, (h) all Capital Lease Obligations of such person, (i) all obligations of such person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements, (j) all outstanding obligations of such person as an account party in respect of letters of credit and bankers' acceptances, and (k) all Disqualified Capital Stock issued by such person with the amount of Indebtedness represented by such Disqualified Capital Stock being deemed to be the greater of its voluntary or involuntary liquidation preference and its maximum repurchase price, including accrued and unpaid dividends. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Indemnity, Subrogation and Contribution Agreement" shall mean the Indemnity, Subrogation and Contribution Agreement, substantially in the form of

Exhibit D, among the Borrower, the Subsidiary Guarantors and the Collateral Agent.

"Interest Payment Date" means (i) with respect to any ABR Loan, the last Business Day of each March, June, September and December of each year, commencing on the first such date after the Closing Date, and (ii) with respect to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan; provided that, in the case of each Interest Period of longer than three months, "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period.

"Interest Period" shall mean (a) in connection with each Eurocurrency Rate Loan, a period the Borrower selects pursuant to the applicable Borrowing Request or Notice of Conversion/Continuation applicable to such Loan, which Interest Period shall be, at the Borrowers' option, either a one, three or six month period or, if deposits in the relevant Eurocurrency interbank market are available to all Lenders for such period (as deter-

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mined by each Lender in its sole discretion), a nine or twelve month period (and, in the case of a Eurocurrency Rate Loan maturing or required to be repaid in less than one month, the date thereafter requested by the applicable Borrower and agreed to by Administrative Agent and Lenders) and (b) as to any ABR Loan, the period commencing on the date of such Borrowing and ending on the earlier of (i) the next succeeding last Business Day of March, June, September or December, and (ii) the Revolving Credit Maturity Date, the Tranche A Maturity Date, the Tranche B Maturity Date or the Tranche C Maturity Date, as applicable; provided that: (i) the initial Interest Period for any Eurocurrency Rate Loan shall commence on the initial date of Borrowing in respect of such Loan, in the case of a Loan initially made as a Eurocurrency Rate Loan, or on the date specified in the applicable Notice of Conversion/Continuation, in the case of a Loan converted to a Eurocurrency Rate Loan; (ii) in the case of immediately successive Interest Periods applicable to a Eurocurrency Rate Loan continued as such pursuant to a Notice of Conversion/Continuation, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires; (iii) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (v) and (vi) below end on the last Business Day of a calendar month; (v) no Interest Period with respect to any portion of the Tranche A Term Loans shall extend beyond the Tranche A Term Loan Maturity Date, no Interest Period with respect to any portion of the Tranche B Term Loans shall extend beyond the Tranche B Term Loan Maturity Date, no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Credit Maturity Date and no Interest Period with respect to the Tranche C Term Loan shall extend beyond the Tranche C Maturity Date; (vi) no Interest Period with respect to any portion of the Term Loans shall extend beyond a date on which the Borrower is required to make a scheduled payment of principal of such Term Loans Type, unless the sum of (a) the aggregate principal amount of Term Loans of the Type to be repaid that are ABR Loans plus (b) the aggregate principal amount of Term Loans of the Type to be repaid that are Eurocurrency Rate Loans with Interest Periods expiring on or before such date equals or exceeds the principal amount required to be paid on the Term Loans of such Type on such date; (vii) there shall be no more than 12 Eurocurrency Rate Loans outstanding at any time; and (viii) in the event the Borrower fails to specify an Interest Period for any Eurocurrency Rate Loan in the applicable Notice of Borrowing or Notice of Conversion/Continuation, the Borrower shall be deemed to have selected an Interest Period of one month. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interest Rate Determination Date" means, with respect to any Interest Period in connection with each Eurocurrency Rate Loan the second Business Day prior to the first day of such Interest Period.

"Interest Rate Protection Agreement" shall mean any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar agreement or arrangement designed to protect the Borrower or any of the Subsidiaries against fluctuations in interest rates, and not entered into for speculation.

"Issuing Bank" shall mean, as the context may require, (a) Credit Suisse First Boston, with respect to Letters of Credit issued by it and (b) any other Lender that may become an Issuing Bank pursuant to Section 2.23(i) or (k), with respect to Letters of Credit issued by such Lender, or (c) collectively, all the foregoing.

"Issuing Bank Fees" shall have the meaning assigned to such term in Section

"L/C Commitment" shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.23.

"L/C Disbursement" shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

"L/C Exposure" shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The L/C Exposure of any Revolving Credit Lender at any time shall mean its Pro Rata Share of the aggregate L/C Exposure at such time.

"L/C Participation Fee" shall have the meaning assigned to such term in Section 2.05(c).

"Lenders" shall mean (a) the financial institutions listed on Schedule 2.01 (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance. Unless the context clearly indicates otherwise, the term "Lenders" shall include the Swingline Lender.

"Letter of Credit" shall mean any letter of credit issued pursuant to Section 2.23.

"Leverage Ratio" shall mean, at any date of determination, the ratio of Consolidated Indebtedness on such date to Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower most recently ended as of such date. Solely for purposes of this definition, if at any time the Leverage Ratio is being determined the Borrower or any Subsidiary shall have completed a Permitted Acquisition or an Asset Sale since the beginning of the relevant four fiscal quarter period, the Leverage Ratio shall be determined on a pro forma basis as if such Permitted Acquisition or Asset Sale, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such period.

"LIBOR" shall mean, with respect to any LIBOR Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of the relevant Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBOR" shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

"LIBOR Borrowing" shall mean a Borrowing comprised of LIBOR Loans.

"LIBOR Loan" shall mean any LIBOR Revolving Loan or LIBOR Term Loan.

"LIBOR Revolving Loan" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBOR in accordance with the provisions of Article II.

"LIBOR Term Borrowing" shall mean a Borrowing comprised of LIBOR Term Loans.

"LIBOR Term Loan" shall mean any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBOR in accordance with the provisions of Article II.

"Lien" shall mean, with respect to any Property, (a) any mortgage, deed of trust, lien, pledge, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or nature, any other type of preferential arrangement in respect of such Property or any filing of any financing statement signed by the applicable Loan Party under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention

agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" shall mean this Agreement, the Letters of Credit, the Subsidiary Guarantee Agreements, the Security Documents and the Indemnity, Subrogation and Contribution Agreement.

"Loan Parties" shall mean the Borrower and the Subsidiary Guarantors and any Subsidiary Borrowers and any Subsidiary of the foregoing party to any Security Document.

"Loans" shall mean the Revolving Loans, the Term Loans and the Swingline Loans.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Material Adverse Effect" shall mean (a) a materially adverse effect on the business, Property, results of operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Loan Parties to perform any of their obligations under the Loan Documents or (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document.

"Mortgage" shall mean an agreement, including, but not limited to, a fee or leasehold mortgage, deed of trust or any other document acceptable to the Collateral Agent, creating and evidencing a Lien on a Mortgaged Property, which shall be substantially in the form of Exhibit E 1 or Exhibit E 2, as

appropriate, with such schedules and including such additional provisions and other deviations from such Exhibit or form as shall be necessary to conform such document to applicable Requirements of Law or as shall be customary under such applicable Requirements of Law, as the same may at any time be amended in accordance with the terms thereof and hereof.

"Mortgaged Property" shall mean the Real Property of the Loan Parties specified on Schedule 1.01(a) (i) (containing each parcel of owned Real Property to be made subject to a Mortgage) and Schedule 1.01(a) (ii) (containing each parcel of leased Real Property to be made subject to a Mortgage), which shall be subject to a Mortgage and each additional Real Property which shall be subject to a Mortgage delivered pursuant to the provisions of Section 5.11.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a) (3) of ERISA.

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"Net Cash Proceeds" shall mean (a) with respect to any Asset Sale, the cash proceeds (including cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), net of (i) selling expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes paid or payable in connection with such sale), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iii) the Borrower's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the assets sold within 90 days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds) and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which to the extent permitted hereunder and under the Security Documents is secured by the asset sold in such Asset Sale and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset), (b) with respect to any issuance or disposition of Indebtedness, the cash proceeds thereof, net of all taxes and customary fees, commissions, costs and other expenses incurred in connection therewith, (c) with respect to any Equity Offering, the cash proceeds thereof, net of all customary fees, commissions, costs and other expenses incurred in connection therewith and (d) with respect to any Casualty Event, the cash Net Condemnation Award, Net Insurance Proceeds or, in the case of any title loss, insurance proceeds, relating to any title loss or other compensation received in respect thereof, less the amount of all reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such title loss.

"Net Condemnation Award" shall mean the proceeds of any award or payment on account of a Taking, together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking.

"Net Insurance Proceeds" shall mean the proceeds of any insurance payable in respect of such Destruction together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction.

"New Senior Subordinated Note Documents" shall mean the New Senior Subordinated Notes, the New Senior Subordinated Note Indenture and all other documents executed and delivered with respect to the New Senior Subordinated Notes, including any agreement with respect to the registration or exchange thereof or the New Senior Subordinated Note Indenture.

"New Senior Subordinated Note Indenture" shall mean the indenture or other instrument pursuant to which the Senior Subordinated Notes may be issued subject to such terms and conditions, including subordination provisions, as shall be reasonably acceptable to the Lenders.

"New Senior Subordinated Notes" shall mean the Borrower's Senior Subordinated Notes Due 2009 to be issued pursuant to the New Senior Subordinated Note Indenture and any notes issued by the Borrower in exchange for, and as contemplated by, the New Senior Subordinated Notes with substantially identical terms as the New Senior Subordinated Notes.

"Obligations" shall mean all amounts, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing to any Lender or its respective successors, transferees or assignees by any Loan Party pursuant to the terms of any Loan Document or secured by any of the Security Documents, whether or not the right of such person to payment in respect of such obligations and liabilities is reduced to

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judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured and whether or not such claim is discharged, stayed or otherwise affected by any bankruptcy case or insolvency or liquidation proceeding.

"Other Hedging Agreement" shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements designed to protect against the fluctuations in currency or commodity values.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Permitted Acquisition" shall have the meaning assigned to such term in Section 6.04(j).

"Permitted Liens" shall have the meaning assigned to such term in Section 6.02.

"person" shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledged Collateral" shall have the meaning assigned to such term in any Security Agreement delivered on the Closing Date or thereafter pursuant to Section 5.11.

"Prior Liens" shall mean Liens which, pursuant to the provisions of the applicable Security Document, are or may be superior to the Lien of such Security Document.

"pro forma basis" shall mean, in connection with any calculation of compliance with any financial covenant or financial term, the calculation thereof after giving effect on a pro forma basis to (w) if the relevant period to be tested includes any period occurring prior to the Closing Date, the consummation of the Divestitures or Spin-Off as if the same had occurred on the first day of such period, (x) the assumption, incurrence or issuance of any Indebtedness (other than revolving Indebtedness, except to the extent same is incurred to finance the Divestitures or Spin-Off to refinance other outstanding Indebtedness) after the first day of the relevant Interest Period as if such Indebtedness had been incurred (and the proceeds thereof applied) on the first day of the relevant Interest Period and (y) the permanent repayment of any

Indebtedness (other than revolving Indebtedness) after the first day of the relevant Interest Period as if such Indebtedness had been retired, redeemed or repurchased on the first day of the relevant Interest Period, with the following rules to apply in connection therewith:

(i) all Indebtedness (x) (other than revolving Indebtedness, except to the extent same is incurred to finance the Divestiture or Asset Sale or to refinance other outstanding Indebtedness) assumed, incurred or issued after the first day of the relevant Interest Period (whether incurred to refinance Indebtedness or otherwise) shall be deemed to have been incurred or issued (and the proceeds thereof applied) on the first day of the respective Interest Period and remain outstanding through the

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date of determination and (y) (other than revolving Indebtedness) permanently retired or redeemed after the first day of the relevant Interest Period shall be deemed to have been retired or redeemed on the first day of the respective Interest Period and remain retired through the date of determination; and

(ii) all Indebtedness assumed to be outstanding pursuant to preceding clause (i) shall be deemed to have borne interest at (x) the rate applicable thereto, in the case of fixed rate Indebtedness or (y) the rates which would have been applicable thereto during the respective period when same was deemed outstanding, in the case of floating rate Indebtedness (although interest expense with respect to any Indebtedness for period while same was actually outstanding during the respective period shall be calculated using the actual rates applicable thereto while same was actually outstanding).

"Property" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person.

"Pro Rata Share" means (i) with respect to all payments, computations and other matters relating to any Tranche A Term Loan Commitment or any Tranche A Term Loan of any Lender, the percentage obtained by dividing (x) the Tranche A Term Loan Exposure of that Lender by (y) the aggregate Tranche A Term Loan Exposure of all Lenders, (ii) with respect to all payments, computations and other matters relating to any Tranche B Term Loan Commitment or any Tranche B Term Loan of any Lender, the percentage obtained by dividing (x) the Tranche B Term Loan Exposure of that Lender by (y) the aggregate Tranche B Term Loan Exposure of all Lenders, (iii) with respect to all payments, computations and other matters relating to the Revolving Credit Commitment or the Revolving Loans of any Lender or any Letters of Credit issued or participants therein purchased by any Lender or in any Swing Line Loans, the percentage obtained by dividing (x) the Revolving Credit Exposure of that Lender by (y) the aggregate Revolving Credit Exposure of all Lenders and (iv) for all other purposes with respect to each Lender, the percentage obtained by dividing (x) the sum of the Term Loan Exposure of that Lender plus the Revolving Credit Exposure of that Lender by (y) the sum of the aggregate Term Loan Exposure of all Lenders plus the aggregate Revolving Credit Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 9.04. The initial Pro Rate Share of each Lender for purposes of each of clauses (i), (ii), (iii) and (iv) of the preceding sentence is set forth opposite the name of that Lender in Schedule 2.01 annexed hereto.

"Real Property" shall mean, collectively, all right, title and interest (including, without limitation, any leasehold estate) in and to any and all parcels of real property owned or operated by any person, whether by lease, license or other use agreement, together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Register" shall have the meaning given such term in Section 9.04(d).

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

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"Related Fund" shall mean, with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the environment.

"Remedial Action" shall mean (a) a "remedial action" as such term is defined in CERCLA, 42 U.S.C. Section 9601(24), and (b) all other actions required by any Governmental Authority to: (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not migrate or endanger or threaten to endanger public health, welfare or the environment; or (iii) perform studies and investigations in connection with, or as a precondition to, (i) or (ii) above.

"Required Lenders" shall mean, at any time, Lenders having Loans (excluding Swingline Loans), L/C Exposure, Swingline Exposure and unused Revolving Credit and Term Loan Commitments representing at least a majority of the sum of all Loans (excluding Swingline Loans) outstanding, L/C Exposure, Swingline Exposure and unused Revolving Credit and Term Loan Commitments at such time.

"Requirements of Law" shall mean, collectively, any and all requirements of any Governmental Authority including, without limitation, any and all laws, ordinances, rules, regulations or similar statutes or case law.

"Responsible Officer" of any corporation shall mean any executive officer or Financial Officer of such corporation and any other officer or similar official thereof responsible for the administration of the obligations of such corporation in respect of this Agreement.

"Revolving Credit Borrowing" shall mean a Borrowing comprised of Revolving Loans.

"Revolving Credit Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

"Revolving Credit Exposure" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender's L/C Exposure, plus the aggregate amount at such time of such Lender's Swingline Exposure.

"Revolving Credit Lender" shall mean a Lender with a Revolving Credit Commitment.

"Revolving Credit Maturity Date" shall mean July 30, 2006.

"Revolving Loans" shall mean the revolving loans made in Dollars by the Lenders to the Borrower pursuant to clause (c) of Section 2.01. Each Revolving Loan shall be a LIBOR Revolving Loan or an ABR Revolving Loan.

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"Secured Parties" shall have the meaning assigned to such term in the Security Documents.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Agreement" shall mean the Security Agreement, substantially in the form of Exhibit F, among the Borrower, the Subsidiary Guarantors, certain other Subsidiaries and the Collateral Agent for the benefit of the Secured Parties, as the same may be amended in accordance with the terms thereof and hereof or such other agreements acceptable to the Collateral Agent as shall be necessary to comply with applicable Requirements of Law and effective to grant to the Collateral Agent a perfected first priority Lien on and security interest in the Pledged Collateral.

"Security Documents" shall mean the Mortgages, the Security Agreement and each other security document or pledge agreement required by applicable Requirements of Law to grant a valid, perfected Lien on and security interest in any Property hereafter acquired or developed or any other Additional Collateral, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement or any Mortgage to be filed with respect to the security interests in Property created pursuant to any Security Agreement or any Mortgage and any other document or instrument utilized to pledge or grant a security interest in any Property of whatever kind or nature as collateral for the Obligations including, without limitation, any and all documents or instruments delivered pursuant to Section 5.11.

"Senior Debt" shall mean, at any date, the Consolidated Indebtedness of the Borrower other than Subordinated Debt.

"Senior Leverage Ratio" shall mean, at any date, the ratio of (x) Senior Debt to (y) Consolidated EBITDA for the four fiscal quarters preceding such date.

"SPC" has the meaning specified in Section 9.04(i).

"Spin-Off" shall mean the spin-off by the Borrower of APW, Ltd.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate, or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR and EURIBOR Loans shall be deemed to constitute Eurocurrency Liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Debt" shall mean Indebtedness of the Borrower or any Subsidiary that is contractually subordinated to any other Indebtedness of the Borrower or such Subsidiary, as the case may be, on terms satisfactory to the Required Lenders. No Indebtedness shall be subordinate to any other Indebtedness solely by virtue of such other Indebtedness being secured and such Indebtedness not being secured or not being secured by the same collateral.

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"subsidiary" shall mean, with respect to any person (herein referred to as the "parent"), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" shall mean any subsidiary of the Borrower.

"Subsidiary Borrower" shall mean any Subsidiary that borrows funds hereunder upon execution of the Assumption Agreement pursuant to Section 2.24.

"Subsidiary Guarantee Agreement" shall mean the Subsidiary Guarantee Agreement, substantially in the form of Exhibit G, made by the Subsidiary Guarantors in favor of the Collateral Agent for the benefit of the Secured Parties.

"Subsidiary Guarantor" shall mean each Subsidiary listed on Schedule 1.01(b), and each other Subsidiary that is or becomes a party to a Subsidiary Guarantee Agreement.

"Survey" shall mean a survey of any Real Property (and all improvements thereon): (i) prepared by a surveyor or engineer licensed to perform surveys in the state, province or country where such Real Property is located, (ii) dated (or redated) not earlier than 6 months prior to the date of delivery thereof unless there shall have occurred after the date of such survey any exterior construction on the site of such Real Property, in which event such survey shall be dated (or redated) after the completion of such construction or, if such construction shall not have been completed as of such date of delivery, not earlier than 20 days prior to such date of delivery, (iii) certified by the surveyor (in a manner acceptable to the Collateral Agent) to the Collateral Agent and (iv) sufficiently detailed for the Title Company to delete the survey exceptions or issue a comprehensive endorsement in the applicable title insurance policy, and if necessary to do so, complying in all respects with the minimum detail requirements of the American Land Title Association as such requirements are in effect on the date of preparation of such Survey.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.22, as the same may be reduced from time to time pursuant to Section 2.09 or Section 2.22.

"Swingline Exposure" shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Credit Lender at any time shall equal its Pro Rata Share of the aggregate Swingline Exposure at such time.

"Swingline Loan" shall mean any loan made by the Swingline Lender pursuant to Section 2.22.

"Taking" shall mean any taking of any Property of the Borrower or any of the Subsidiaries or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of any Property of the Borrower or any of the Subsidiaries or any part thereof, by any Governmental Authority, civil or military.

"TARGET Settlement Day" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open.

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"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Tender Offer" shall mean the offer to purchase all of the Existing Senior Subordinated Notes on or before the consummation of the Spin-Off.

"Term Borrowing" shall mean a Borrowing comprised of Tranche A Term Loans or Tranche B Term Loans.

"Term Loan Commitments" shall mean the Tranche A Commitments and the Tranche B Commitments.

"Term Loan Repayment Dates" shall mean the Tranche A Term Loan Repayment Dates and the Tranche B Term Loan Repayment Dates.

"Term Loans" shall mean the Tranche A Term Loans, the Tranche B Term Loans and the Tranche C Term Loans.

"Title Company" shall mean First American Title Insurance Company or such other title insurance company acceptable to the Collateral Agent.

"Total Revolving Credit Commitment" shall mean, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

"Tranche A Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Tranche A Term Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Term Loan Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

"Tranche A Maturity Date" shall mean July 30, 2006.

"Tranche A Term Borrowing" shall mean a Borrowing comprised of Tranche A Term Loans.

"Tranche A Term Loan Exposure" means, with respect to any Lender as of any date of determination (i) prior to the funding of all of the Tranche A Term Loans, that Lender's Tranche A Term Loan Commitment and (ii) after all of the funding of the Tranche A Term Loans, the Dollar Equivalent of the outstanding principal amount of the Tranche A Term Loan of that Lender.

"Tranche A Term Loan Repayment Date" shall have the meaning assigned to such term in Section 2.11(a) (i).

"Tranche A Term Loans" shall mean the term loans made in Dollars or the Alternative Currency, as specified by the Borrower in accordance with Section 2.03 by the Lenders to the Borrower pursuant to clause (a) of Section 2.01. Each Tranche A Term Loan shall be an EURIBOR Term Loan if it is an Alternative Currency Loan or either a LIBOR Term Loan or an ABR Term Loan if it is a Dollar Loan.

"Tranche B Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Tranche B Term Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance

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pursuant to which such Lender assumed its Term Loan Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04

"Tranche B Maturity Date" shall mean July 30, 2008.

"Tranche B Term Borrowing" shall mean a Borrowing comprised of Tranche B Term Loans.

"Tranche B Term Loan Exposure" means, with respect to any Lender as of any date of determination (i) prior to the funding of the Tranche B Term Loans, that

Lender's Tranche B Term Loan Commitment and (ii) after the funding of the Tranche B Term Loans, the outstanding principal amount of the Tranche B Term Loan of that Lender.

"Tranche B Term Loan Repayment Date" shall have the meaning assigned to such term in Section 2.11(a)(ii).

"Tranche B Term Loans" shall mean the term loans made in Dollars by the Lenders to the Borrower pursuant to clause (b) of Section 2.01. Each Tranche B Term Loan shall be either a LIBOR Term Loan or an ABR Term Loan.

"Tranche C Maturity Date" shall have the meaning assigned to such term in Section 2.25 hereof.

"Tranche C Term Loan" shall have the meaning assigned to such term in Section 2.25 hereof.

"Tranche C Term Loan Lenders" shall have the meaning assigned to such term in Section 2.25 hereof.

"Tranche C Term Loan Draw Date" means the date on which the Tranche C Term Loans are drawn by the Borrower.

"Transaction Documents" shall mean the documents entered into or delivered in connection with the Transactions.

"Transactions" shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Transaction Documents, including (a) the consummation of the Spin-Off, (b) the consummation of the Divestitures, (c) the execution and delivery of the Loan Documents and the initial borrowings hereunder, (d) the execution and delivery of the New Senior Subordinated Note Documents and the issuance of the New Senior Subordinated Notes and (e) the redemption of all of the Existing Senior Subordinated Notes and the payment of any accrued interest thereon or premium with respect thereto pursuant to the Tender Offer.

"Type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted EURIBOR, Adjusted LIBOR and the Alternate Base Rate.

"UCC" shall mean the Uniform Commercial Code as in effect in the applicable state or jurisdiction.

"Voting Stock" shall mean any class or classes of capital stock of the Borrower pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of the Borrower.

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"Wholly Owned Subsidiary" shall mean, as to any person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person has a 100% equity interest at such time (other than directors', managing partners' or managing members' qualifying equity interests).

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Terms Generally. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time. Notwithstanding that one or more Subsidiaries shall at any time become Subsidiary Borrowers pursuant to Section 2.24, for purposes of determining compliance with the provisions of Article VI the term "Borrower" shall in all cases mean the Company.

SECTION 1.03. Accounting Terms. All terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the date of this Agreement on the operation of such covenant (or if the

Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI or any related definition for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

SECTION 1.04. Exchange Rates. The Administrative Agent shall determine the Exchange Rate or any specified date to be used for calculating relevant Dollar Equivalent and Alternative Currency Equivalent amounts. The Exchange Rates so determined shall become effective on the specified date shall remain effective for all purposes of this Agreement (other than any provision expressly requiring the use of a current Exchange Rate) and shall be the Exchange Rates employed in converting any amounts between the applicable currencies.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, (a) to make a Tranche A Term Loan in Dollars or an Alternative Currency to the Borrower on the Closing Date in a principal amount not to exceed its Pro Rata Share of its Tranche A Commitment; provided, however, that the Dollar Equivalent of the

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Alternative Currency Tranche A Term Loans in any Alternative Currency made by all Tranche A Term Lenders shall not exceed the Dollar Equivalent of \$30,000,000, (b) to make a Tranche B Term Loan in Dollars to the Borrower on the Closing Date in a principal amount not to exceed its Pro Rata Share of the Tranche B Commitment, and (c) to make Revolving Loans in Dollars to the Borrower, at any time and from time to time on or after the Closing Date, and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Pro Rata Share of the Revolving Credit Exposure exceeding such Lender's Pro Rata Share of the Revolving Credit Commitment; provided, a maximum of \$15,000,000 in Revolving Loans shall be available on the Closing Date. Within the limits set forth in clause (c) of the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans. Amounts paid or prepaid in respect of Term Loans may not be reborrowed. The amount of each Tranche A Commitment (including the sublimit for any Alternative Currency Loans), Tranche B Commitment and Revolving Credit Commitment with respect to each Lender is set forth opposite such Lender's name on Schedule 2.01 hereto.

SECTION 2.02. Loans. (a) Each Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; provided, however, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(e), the Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) and not less than \$5,000,000 (or the Alternative Currency Equivalent thereof) or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.08 and 2.15, each Borrowing shall be comprised entirely of ABR Loans or Eurocurrency Rate Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurocurrency Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; provided, however, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than 12 Eurocurrency Rate Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(e), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 1:00 p.m., New York City time, in each case in same day funds, in Dollars and the Administrative Agent shall promptly credit the amounts so received to an account as directed by the Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corre-

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sponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) If the Issuing Bank shall not have received from the Borrower the payment required to be made by Section 2.23(e) within the time specified in such Section, the Issuing Bank will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each Revolving Credit Lender of such L/C Disbursement and its Pro Rata Share thereof. Each Revolving Credit Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Credit Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 10:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Pro Rata Share of such L/C Disbursement (it being understood that such amount shall be deemed to constitute an ABR Revolving Loan of such Lender and such payment shall be deemed to have reduced the L/C Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Credit Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from the Borrower pursuant to Section 2.23(e) prior to the time that any Revolving Credit Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Credit Lenders that shall have made such payments and to the Issuing Bank, as their interests may appear. If any Revolving Credit Lender shall not have made its Pro Rata Share of such L/C Disbursement available to the Administrative Agent as provided above, such Lender and the Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate.

SECTION 2.03. Borrowing Procedure. In order to request a Borrowing (other than a Swingline Loan or deemed Borrowing pursuant to Section 2.02(e), as to which this Section 2.03 shall not apply), the Borrower shall hand deliver or telecopy to the Administrative Agent a duly completed Borrowing Request (a) in the case of a Eurocurrency Rate Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before a proposed Borrowing, (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the day of a proposed Borrowing and (c) in the case of an Alternative Currency Borrowing, not later than 12:00 noon, local time of the jurisdiction of such Alternative Currency, at least four Business Days before a proposed Borrowing. Each Borrowing Request shall be irrevocable, shall be signed by or on behalf of the Borrower and shall specify the following information: (i) whether the Borrowing then being requested is to be a Tranche A Term Borrowing, a Tranche B Term Borrowing or a Revolving Credit Borrowing, and whether such Borrowing is to be a Eurocurrency Rate Borrowing (and in the case of the Tranche A Term Borrowing, whether the applicable rate shall be a EURIBOR Borrowing or LIBOR Borrowing) or an ABR Borrowing (provided that until the Administrative Agent shall have notified the Borrower that the primary syndication of the Commitments has been completed (which notice shall be given as promptly as practicable and, in any

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event, within 14 days after the Closing Date), the Borrower shall not be permitted to request a Eurocurrency Borrowing); (ii) in the case of a Tranche A Term Borrowing on the Closing Date, the currency applicable to such Borrowing; (iii) the date of such Borrowing (which shall be a Business Day), (iv) the number and location of the account to which funds are to be disbursed (which shall be an account that complies with the requirements of Section 2.02(c)); (v)

the amount (in Dollars or the Alternative Currency, as the case may be) of such Borrowing; (vi) if such Borrowing is to be a Eurocurrency Rate Borrowing, the Interest Period with respect thereto and (vii) the entity which will be the Borrower for such Loan; provided, however, that, notwithstanding any contrary specification in any Borrowing Request, each requested Borrowing shall comply with the requirements set forth in Section 2.02. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no election as to the currency of Borrowing is specified in any such notice, then the requested Borrowing shall be denominated in Dollars. The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.03 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

SECTION 2.04. Evidence of Debt; Repayment of Loans. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent (i) for the account of the Swingline Lender, the then unpaid principal amount of each Swingline Loan, upon the request of the Swingline Lender, on the last day of the Interest Period applicable to such Loan or, if earlier, on the Revolving Credit Maturity Date, (ii) for the account of each Lender holding Term Loans, the principal amount of each Term Loan of such Lender as provided in Section 2.11 and (iii) for the account of each Revolving Credit Lender, the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Credit Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder (including, in the case of an Alternative Currency Loan, the Dollar Equivalent, thereof), the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Subsidiary Guarantor and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

(e) Any Lender may request that the Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in a form and substance reasonably acceptable to the Administrative Agent and the Borrower. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive such a promissory note, the interests represented by such note shall at all times (including after any assignment of all or part of such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

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SECTION 2.05. Fees. (a) The Borrower agrees to pay to each Lender, through the Administrative Agent, on the last Business Day of March, June, September and December in each year and on the Revolving Credit Maturity Date, a commitment fee (a "Commitment Fee") equal to the Applicable Percentage for unused Revolving Credit Commitments on the average daily unused amount of the Commitments of such Lender (other than the Swingline Commitment) during the preceding quarter (or other period commencing with the date hereof and ending with the Revolving Credit Maturity Date or the date on which the Revolving Credit Commitments of all Lenders shall expire or be terminated). All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the date hereof and shall cease to accrue on the date on which the Commitment of such Lender shall expire or be terminated as provided herein. For purposes of calculating Commitment Fees only, no portion of the Revolving Credit Commitments shall be deemed utilized under Section 2.17 as a result of outstanding Swingline Loans.

(b) The Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees separately agreed to by the Borrower and the Administrative Agent (the "Administrative Agent Fees").

(c) The Borrower agrees to pay (i) to each Revolving Credit Lender, through the Administrative Agent, on the last Business Day of March, June, September and December of each year and on the Revolving Credit Maturity Date, a fee (an "L/C Participation Fee") calculated on such Lender's Pro Rata Share of the average daily aggregate L/C Exposure (excluding the portion thereof attributable to

unreimbursed L/C Disbursements) during the preceding quarter (or shorter period commencing with the date hereof or ending with the Revolving Credit Maturity Date or the date on which all Letters of Credit have been canceled or have expired and the Revolving Credit Commitments of all Lenders shall have been terminated) at a rate equal to the Applicable Percentage from time to time used to determine the interest rate on Revolving Credit Borrowings comprised of Eurocurrency Rate Loans pursuant to Section 2.06, and (ii) the fees payable pursuant to the Letter of Credit Fee Letter dated the date hereof between the Borrower and the Administrative Agent (the "Issuing Bank Fees"). All L/C Participation Fees and Issuing Bank Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(d) All Fees shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Issuing Bank Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.06. Interest on Loans. (a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing, including each Swingline Loan, shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when the Alternate Base Rate is determined by reference to the Prime Rate and over a year of 360 days at all other times) at a rate per annum equal to the Alternate Base Rate plus the Applicable Percentage in effect from time to time.

(b) Subject to the provisions of Section 2.07, the Loans comprising each LIBOR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBOR for the Interest Period in effect for such Borrowing plus the Applicable Percentage in effect from time to time.

(c) Subject to the provisions of Section 2.07, the Loans comprising each Alternative Currency Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360

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days) at a rate equal to the Adjusted EURIBOR for the Interest Period in effect for such Borrowing plus the Applicable Percentage in effect from time to time.

(d) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate, Adjusted LIBOR or EURIBOR Rate for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(e) The Tranche C Term Loans shall bear interest at a rate determined by the Administrative Agent on the Tranche C Term Loan Draw Date. On the Tranche C Term Loan Draw Date, the interest rate (and Applicable Percentage) applicable to the Tranche B Term Loans shall be reset to the greater of (i) the interest rate (and Applicable Percentage) applicable to the Tranche Term B Loans on the Tranche C Term Loan Draw Date and (ii) the interest rate (and Applicable Percentage) applicable to the Tranche C Term Loans, and all other Applicable Percentages for Tranche B Term Loans of any type shall be automatically deemed to be adjusted by a like percentage.

SECTION 2.07. Default Interest. If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, by acceleration or otherwise, or under any other Loan Document, the Borrower shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) (a) in the case of overdue principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when determined by reference to the Prime Rate and over a year of 360 days at all other times) equal to the rate that would be applicable to an ABR Revolving Loan plus 2.00%; provided that in the case of Eurocurrency Rate Loans which are Dollar Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurocurrency Rate Loans shall thereupon become Alternate Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Alternate Base Rate Loans; provided, further, that in the case of Eurocurrency Rate Loans which are Alternative Currency Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurocurrency Rate Loans shall continue as Eurocurrency Rate Loans with one month Interest Periods and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for such Loans, and all other Applicable Percentages on Tranche B Term Loans shall be automatically deemed to be adjusted by a like percentage.

SECTION 2.08. Special Provisions Governing Eurocurrency Rate Loans .
Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to Eurocurrency Rate Loans as to the matters covered:

(a) Determination of Applicable Interest Rate. As soon as practicable

after 10:00 A.M. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurocurrency Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrowers and each Lender.

(b) Inability to Determine Applicable Interest Rate. In the event

that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all

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parties hereto absent manifest error), on any Interest Rate Determination Date with respect to any Eurocurrency Rate Loans, that by reason of circumstances affecting the relevant Eurocurrency interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of any rate that is an Adjusted Eurocurrency Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, EURIBOR Term Loans or LIBOR Loans, as the case may be, until such time as Administrative Agent notifies the Borrower and Lenders that the circumstances giving rise to such notice no longer exist and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by the Borrowers with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrowers.

(c) Indemnification for Breakage or Non-Commencement of Interest

Periods. The Borrowers shall indemnify each Lender with respect to

Eurocurrency Loans pursuant to Section 2.16.

(d) Booking of Eurocurrency Rate Loans. Any Lender may make, carry

or, subject to Section 9.04, transfer Eurocurrency Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of that Lender; provided that such making, carrying or transferring Eurocurrency Rate Loans does not result in any increase in costs or taxes to the Borrower pursuant to Section 2.20 over the amount that would otherwise be payable by the Borrower.

(e) Assumptions Concerning Funding of Eurocurrency Rate Loans.

Calculation of all amounts payable to a Lender under this Section 2.08 and under Section 2.20 shall be made as though that Lender had actually funded each of its relevant Eurocurrency Rate Loans through the purchase of a deposit in Dollars or in an Alternative Currency, as applicable, bearing interest at the rate obtained pursuant to the definition of Eurocurrency Rate in an amount equal to the amount of such Eurocurrency Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurocurrency deposit from an offshore office of that Lender to a domestic office of that Lender in the United States of America; provided, however, that each Lender may fund each of its Eurocurrency Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.08 and under Section 2.20.

(f) Eurocurrency Rate Loans After Default. After the occurrence of

and during the continuation of an Event of Default, (i) except as provided in Section 2.07, the Borrower may not elect to have a Loan be made or maintained as, or converted to, a Eurocurrency Rate Loan after the expiration of any Interest Period then in effect for that Loan and (ii) subject to the provisions of Section 2.08(c), any Notice of Borrowing or Notice of Conversion/Continuation given by the Borrower with respect to a requested borrowing or conversion/continuation that has not yet occurred shall be deemed to be rescinded by the Borrower.

SECTION 2.09. Termination and Reduction of Commitments. (a) The Term Loan Commitments shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date. The Revolving Credit Commitments, the Swingline Commitment and the L/C Commitment shall automatically terminate on the Revolving Credit Maturity Date. Notwithstanding the foregoing, all the Commitments shall automatically terminate at 5:00 p.m., New York City time, on August 30, 2000, if

the initial Credit Event shall not have occurred by such time.

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(b) Upon at least three Business Days' prior irrevocable written or telecopy notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Term Loan Commitments or the Revolving Credit Commitments; provided, however, that (i) each partial reduction of the Term Loan Commitments or the Revolving Credit Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$5,000,000 and (ii) the Total Revolving Credit Commitment shall not be reduced to an amount that is less than the greater of the Aggregate Revolving Credit Exposure at the time or \$50,000,000.

(c) Each reduction in the Term Loan Commitments or the Revolving Credit Commitments hereunder shall be made ratably among the Lenders in accordance with their respective applicable Commitments. The Borrower shall pay to the Administrative Agent for the account of the applicable Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

SECTION 2.10. Conversion and Continuation of Borrowings. The Borrower shall have the right subject to Sections 2.03 and 2.07 at any time upon prior irrevocable notice to the Administrative Agent pursuant to a Notice of Conversion/Continuation (a) not later than 11:00 a.m., New York City time, on the day of conversion, to convert any LIBOR Borrowing into an ABR Borrowing, (b) not later than 11:00 a.m., New York City time, three Business Days prior to conversion or continuation, to convert any ABR Borrowing into a LIBOR Borrowing or to continue any LIBOR Borrowing as a LIBOR Borrowing for an additional Interest Period, (c) not later than 11:00 a.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any LIBOR Borrowing to another permissible Interest Period, and (d) not later than 12:00 noon, local time of the jurisdiction of such Alternative Currency, at least four Business Days prior to conversion to convert the Interest Period with respect to any EURIBOR Borrowing to another permissible Interest Period subject in each case to the following:

(i) each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(ii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(iii) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any LIBOR Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(iv) if any LIBOR Borrowing is converted at a time other than the end of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Sections 2.08(c) and 2.16;

(v) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a LIBOR Borrowing;

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(vi) any portion of a LIBOR Borrowing that cannot be converted into or continued as a LIBOR Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing;

(vii) EURIBOR Borrowings may only be continued as EURIBOR Borrowings and in the event the Borrower fails to select a new Interest Period at expiration of the applicable Interest Period, the Borrower shall be deemed to have selected an Interest Period of one month; and

(viii) an Alternative Currency Loan cannot be converted pursuant to this Section 2.10 from the currency in which it was initially made to another Alternative Currency.

Each notice pursuant to this Section 2.10 shall be irrevocable and shall refer to this Agreement and specify (i) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (ii) whether such Borrowing is to be converted to or continued as a LIBOR Borrowing, a EURIBOR

Borrowing or an ABR Borrowing, (iii) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (iv) if such Borrowing is to be converted to or continued as a LIBOR Borrowing or a EURIBOR Borrowing, the Interest Period with respect thereto.

SECTION 2.11. Repayment of Term Borrowings. (a) (i) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, on the dates set forth below, or if any such date is not a Business Day, on the next preceding Business Day (each such date being a "Tranche A Term Loan Repayment Date"), an amount of the Tranche A Term Loans (as adjusted from time to time pursuant to Sections 2.11(b), 2.12 and 2.13(g)) equal to the percentage of the original principal amount of the Tranche A Term Loans set forth below for such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment:

Date	Percentage
----	-----
September 30, 2000	2.174%
December 31, 2000	2.174%
March 31, 2001	2.174%
June 30, 2001	2.174%
September 30, 2001	3.260%
December 31, 2001	3.260%
March 31, 2002	3.260%
June 30, 2002	3.260%
September 30, 2002	4.348%
December 31, 2002	4.348%
March 31, 2003	4.348%
June 30, 2003	4.348%
September 30, 2003	4.348%
December 31, 2003	4.348%
March 31, 2004	4.348%
June 30, 2004	4.348%
September 30, 2004	5.435%
December 31, 2004	5.435%
March 31, 2005	5.435%

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Date	Percentage
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June 30, 2005	5.435%
September 30, 2005	5.435%
December 31, 2005	5.435%
March 30, 2006	5.435%
Tranche A Maturity Date	5.435%

(ii) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, on the dates set forth below or, if any such date is not a Business Day, on the next preceding Business Day (each such date being a "Tranche B Term Loan Repayment Date"), an amount of the Tranche B Term Loans (as adjusted from time to time pursuant to Sections 2.11(b), 2.12 and 2.13(g)) equal to the percentage of the original principal amount of the Tranche B Term Loans set forth below for such date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment:

Date	Percentage
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September 30, 2000	0.2325%
December 31, 2000	0.2325%
March 31, 2001	0.2325%
June 30, 2001	0.2325%
September 30, 2001	0.2325%
December 31, 2001	0.2325%
March 31, 2002	0.2325%
June 30, 2002	0.2325%
September 30, 2002	0.2325%
December 31, 2002	0.2325%
March 31, 2003	0.2325%
June 30, 2003	0.2325%
September 30, 2003	0.2325%
December 31, 2003	0.2325%
March 31, 2004	0.2325%
June 30, 2004	0.2325%
September 30, 2004	0.2325%
December 31, 2004	0.2325%
March 31, 2005	0.2325%
June 30, 2005	0.2325%
September 30, 2005	0.2325%
December 31, 2005	0.2325%

March 31, 2006	0.2325%
June 30, 2006	0.2325%
September 30, 2006	8.721%
December 31, 2006	8.721%
March 31, 2007	8.721%
June 30, 2007	8.721%
September 30, 2007	14.884%
December 31, 2007	14.884%

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Date	Percentage
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March 31, 2008	14.884%
Tranche B Maturity Date	14.884%

(iii) The Borrower shall pay to the Administrative Agent, for the account of the Lender, an amount of the Tranche C Term Loans in equal quarterly installments payable at the end of each quarter (commencing with the end of the first full calendar quarter following the Tranche C Term Loan Draw Date) aggregating 1.0% per year of the aggregate principal amount of Tranche C Term Loans outstanding on the Tranche C Term Loan Draw Date, except for the final year during which the Borrower will pay one-quarter of the remaining principal amount outstanding of the Tranche C Term Loans at the end of each calendar quarter of such final year (provided that if such date is not a Business Day, the installment shall be paid on the preceding Business Day); provided that the scheduled installments of principal of the Tranche C Term Loans set forth above shall be reduced on a pro rata basis in connection with any voluntary or mandatory prepayments of the Tranche C Term Loans in accordance with Sections 2.12 or 2.13; provided, further that the final installment specified above for the repayment by the Borrower of the Tranche C Term Loans shall be in an amount, if such amount is different from that specified above, sufficient to repay all amounts owing by the Borrower under this Agreement with respect to the Tranche C Term Loans.

(b) In the event and on each occasion that any Tranche A Commitment or Tranche B Commitment shall be reduced or shall expire or terminate other than as a result of the making of a Tranche A Term Loan or a Tranche B Term Loan, as the case may be, the installments payable on each Tranche A Term Loan Repayment Date and each Tranche B Term Loan Repayment Date, as the case may be, shall be reduced pro rata by an aggregate amount equal to the amount of such reduction, expiration or termination.

(c) To the extent not previously paid, all Tranche A Term Loans and Tranche B Term Loans shall be due and payable on the Tranche A Maturity Date and Tranche B Maturity Date, respectively, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(d) All repayments pursuant to this Section 2.11 shall be subject to Section 2.16, but shall otherwise be without premium or penalty.

SECTION 2.12. Prepayment. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon at least four Business Days' prior written or telecopy notice (or telephone notice promptly confirmed by written or telecopy notice) in the case of Eurocurrency Loans, or written or telecopy notice (or telephone notice promptly confirmed by written or telecopy notice) on or prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 11:00 a.m., New York City time; provided, however, that each partial prepayment shall be in an amount that is an integral multiple of \$1,000,000 (or the Alternative Currency Equivalent thereof) and not less than \$5,000,000 (or the Alternative Currency Equivalent thereof).

(b) Optional prepayments of Term Loans shall be first allocated and applied pro rata with respect to the next scheduled installment of principal due in respect of the Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans under Sections 2.11(a)(i), (ii) and (iii), respectively and thereafter allocated pro rata to the then outstanding Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans (after giving effect to the prepayments applied with respect to the next scheduled installment) and applied pro rata against the remaining scheduled installments of principal due in respect of the Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans under Sections 2.11(a)(i), (ii) and (iii), respectively; pro-

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vided, Lenders of the Tranche B Term Loans shall have the right (to the extent Tranche A Term Loans remain outstanding after giving effect to such prepayment of the Tranche A Term Loans) to waive any such prepayment (other than applied to the next scheduled prepayment) by giving notice to the Administrative Agent at least three Business Days prior to the prepayment, in which case the waived portion of any such prepayment will be allocated to the Tranche A Term Loan.

(c) Each notice of prepayment (i) shall specify the prepayment date and the

principal amount of each Borrowing (or portion thereof) to be prepaid, (ii) shall be irrevocable and (iii) shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein. All prepayments under this Section 2.12 shall be subject to Sections 2.08(c) and 2.16 but otherwise without premium or penalty. All prepayments under this Section 2.12 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

SECTION 2.13. Mandatory Prepayments. (a) In the event of any termination of all the Revolving Credit Commitments, the Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Credit Borrowings and all outstanding Swingline Loans and replace all outstanding Letters of Credit and/or deposit an amount equal to the L/C Exposure in cash in a cash collateral account established with the Collateral Agent for the benefit of the Secured Parties. In the event of any partial reduction of the Revolving Credit Commitments, then (i) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Borrower and the Revolving Credit Lenders of the Aggregate Revolving Credit Exposure after giving effect thereto and (ii) if the Aggregate Revolving Credit Exposure would exceed the Total Revolving Credit Commitment after giving effect to such reduction or termination, then the Borrower shall, on the date of such reduction or termination, repay or prepay Revolving Credit Borrowings or Swingline Loans (or a combination thereof) and/or replace or cash collateralize outstanding Letters of Credit in an amount sufficient to eliminate such excess.

(b) Not later than the third Business Day following the receipt of any Net Cash Proceeds of any Asset Sale, the Borrower shall apply 100% of the Net Cash Proceeds received with respect thereto to prepay outstanding Term Loans in accordance with Section 2.13(g), other than (i) an aggregate of \$10.0 million in Net Cash Proceeds of Asset Sales consummated after the Closing Date and (ii) an additional \$20.0 million of the Net Cash Proceeds of any Asset Sale consummated with respect to the assets set forth on Schedule 2.13(b) hereto, provided, that, for purposes of this clause (ii), on a pro forma basis for any such sale such Senior Leverage Ratio shall be less than 2.00:1.00 on the date of such sale.

(c) If the Senior Leverage Ratio is equal to or greater than 2.00:1.00 on the date of the consummation of an Equity Offering (after giving effect to the application of the proceeds of such Equity Offering), then the Borrower shall, substantially simultaneously with (and in any event not later than the third Business Day next following) the consummation of such Equity Offering, apply 50% of the Net Cash Proceeds therefrom to prepay outstanding Term Loans in accordance with Section 2.13(g); provided, no prepayment of Term Loans shall be required pursuant to this Section 2.13(c) if the Senior Leverage Ratio is less than 2.00:1.00 on such date.

(d) No later than 100 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ending on August 31, 2001, the Borrower shall prepay outstanding Term Loans in accordance with Section 2.13(g) in an aggregate principal amount equal to 50% of Excess Cash Flow for the fiscal year then ended minus any amounts prepaid pursuant to Section 2.12 during such fiscal year; provided, no prepayment of Term Loans shall be required pursuant to this Section 2.13(d) if the Leverage Ratio is less than 3.00:1.00 as of the end of such fiscal year; provided, further, however, notwithstanding the foregoing, in any event the Borrower

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shall prepay outstanding Term Loans to the extent of any amount that would otherwise be required to be applied to an Excess Cash Flow Offer (as defined in the New Senior Subordinated Note Indenture).

(e) In the event that any Loan Party or any subsidiary of a Loan Party shall receive Net Cash Proceeds from the issuance or other disposition of Indebtedness for money borrowed of any Loan Party or any subsidiary of a Loan Party (other than Indebtedness permitted pursuant to Sections 6.01(a), (b), (d), (e), (f), (g), (h), (i) and (j)), the Borrower shall, substantially simultaneously with (and in any event not later than the third Business Day next following) the receipt of such Net Cash Proceeds by such Loan Party or such subsidiary, (x) apply an amount equal to 100% of such Net Cash Proceeds of Indebtedness incurred pursuant to Section 6.01(1) to prepay outstanding Term Loans, (y) if the Senior Leverage Ratio is equal to or greater than 2.00:1.00 on the date of the issuance or disposition of all other Indebtedness, then apply an amount equal to 100% of such Net Cash Proceeds of such other Indebtedness incurred to prepay outstanding Term Loans and (z) if the Senior Leverage Ratio is less than 2.00:1.00 on the date of any issuance or disposition of Indebtedness incurred pursuant to Section 6.01(k), apply an amount equal to 50% of the Net Cash Proceeds of such other Indebtedness to prepay outstanding Term Loans, in any case of (x), (y) or (z) in accordance with Section 2.13(g).

(f) In the event that there shall occur any Casualty Event and, pursuant to the applicable Security Document, the Net Cash Proceeds with respect thereto are required to be used to prepay the Term Loans, then the Borrower shall apply an amount equal to 100% of such Net Cash Proceeds to prepay outstanding Term Loans in accordance with Section 2.13(g).

(g) Mandatory prepayments of outstanding Term Loans under this Agreement shall be allocated pro rata between the then-outstanding Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans, if any, and, subject to paragraph (j) below, applied pro rata against the remaining scheduled installments of principal due in respect of Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans, if any, under Sections 2.11(a) (i), (ii) and (iii), respectively.

(h) The Borrower shall deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.13, (i) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (ii) to the extent practicable, at least three days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Loan being prepaid and the principal amount of each Loan (or portion thereof) to be prepaid. All prepayments of Borrowings under this Section 2.13 shall be subject to Sections 2.08(c) and 2.16, but shall otherwise be without premium or penalty.

(i) Amounts to be applied pursuant to this Section 2.13 shall be allocated pro rata with respect to the then-outstanding Tranche A Term Loans, Tranche B Term Loans, and Tranche C Term Loans and applied pro rata against the remaining scheduled installments of principal due in respect of the Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans under Section 2.11(a) (i), (ii) and (iii), respectively. Except in the case of payments to be applied to Tranche B Term Loans (which shall be applied immediately to the outstanding amounts of the Tranche B Term Loans), amounts to be applied pursuant to this Section 2.13 shall be applied immediately to any outstanding ABR Term Loans and, at the option of the Borrower, be applied immediately to any outstanding LIBOR Term Loans, in accordance with this paragraph (i) and paragraph (j), and/or shall be deposited in the Prepayment Account (as defined below). The Administrative Agent shall apply any cash deposited in the Prepayment Account (i) allocable to Term Loans to prepay LIBOR Term Loans and (ii) allocable to Revolving Loans to prepay LIBOR Revolving Loans, in each case on the last day of their respective Interest Periods (or, at the direction of the Borrower, on any earlier date) until all outstanding Term Loans or Revolving Loans, as the case may be, have been prepaid or until all the allocable cash on deposit with

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respect to such Loans has been exhausted. For purposes of this Agreement, the term "Prepayment Account" shall mean an account established by the Borrower with the Administrative Agent and over which the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal for application in accordance with this paragraph (i). The Administrative Agent will, at the request of the Borrower, invest amounts on deposit in the Prepayment Account in Cash Equivalents that mature prior to the last day of the applicable Interest Periods of the Eurocurrency Term Borrowings or LIBOR Revolving Borrowings to be prepaid, as the case may be; provided, however, that (i) the Administrative Agent shall not be required to make any investment that, in its sole judgment, would require or cause the Administrative Agent to be in, or would result in any, violation of any law, statute, rule or regulation and (ii) the Administrative Agent shall have no obligation to invest amounts on deposit in the Prepayment Account if a Default or Event of Default shall have occurred and be continuing. The Borrower shall indemnify the Administrative Agent for any losses relating to the investments so that the amount available to prepay Eurocurrency Rate Borrowings on the last day of the applicable Interest Period is not less than the amount that would have been available had no investments been made pursuant thereto. Other than any interest earned on such investments, the Prepayment Account shall not bear interest. Interest or profits, if any, on such investments shall be deposited in the Prepayment Account and reinvested and disbursed as specified above. If the maturity of the Loans has been accelerated pursuant to Article VII, the Administrative Agent may, in its sole discretion, apply all amounts on deposit in the Prepayment Account to satisfy any of the Obligations. The Borrower hereby grants to the Administrative Agent, for its benefit and the benefit of the Issuing Bank and the Lenders, a security interest in the Prepayment Account to secure the Obligations.

(j) Any Lender of Tranche B Term Loans may elect, by notice to the Administrative Agent in writing (or by telecopy or telephone promptly confirmed in writing) by 11:00 a.m., New York City time, at least three Business Days prior to any prepayment of Tranche B Term Loans required to be made by the Borrower for the account of such Lender pursuant to this Section 2.13, to cause all or a portion of such prepayment to be applied instead to prepay Tranche A Term Loans (to the extent Tranche A Term Loans remain outstanding after giving effect to such prepayment of the Tranche A Term Loans) in accordance with paragraph (g) above. Any amounts remaining after the Tranche A Term Loans, Tranche B Term Loans and Tranche C Term Loans have been paid in full shall be applied to any outstanding ABR Revolver Loans and then to any outstanding LIBOR Revolving Loans pursuant to paragraph (i) above. Amounts used to prepay Revolving Loans pursuant to this Section 2.13 may not be reborrowed and the Revolving Credit Commitment shall be permanently reduced by an equivalent amount.

Notwithstanding any other provision of this Agreement, if after the date of this Agreement any change in applicable law or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender or the Issuing Bank (except any such reserve requirement which is reflected in the Adjusted EURIBOR or the Adjusted LIBOR) or shall impose on such Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein, and the result of any of the foregoing shall be to increase the cost to such Lender or the Issuing Bank of making or maintaining any Eurocurrency Loan or increase the cost to any Lender of issuing or maintaining any Letter of Credit or purchasing or maintaining a participation therein or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise) by an amount deemed by such Lender or the Issuing Bank to be material, then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, upon demand such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

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(b) If any Lender or the Issuing Bank shall have determined that the adoption after the date hereof of any law, rule, regulation, agreement or guideline regarding capital adequacy, or any change after the date hereof in any such law, rule, regulation, agreement or guideline (whether such law, rule, regulation, agreement or guideline has been adopted) or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance by any Lender (or any lending office of such Lender) or the Issuing Bank or any Lender's or the Issuing Bank's holding company with any request or directive regarding capital adequacy (whether or not having the force of law) of any Governmental Authority has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made or participations in Letters of Credit purchased by such Lender pursuant hereto or the Letters of Credit issued by the Issuing Bank pursuant hereto to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such applicability, adoption, change or compliance (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy) by an amount deemed by such Lender or the Issuing Bank to be material, then from time to time the Borrower shall pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank, setting forth in reasonable detail the reason therefor, the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) above, and the calculation thereof, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank the amount shown as due on any such certificate delivered by it within 10 days after its receipt of the same.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be under any obligation to compensate any Lender or the Issuing Bank under paragraph (a) or (b) above with respect to increased costs or reductions with respect to any period prior to the date that is four months prior to such request if such Lender or the Issuing Bank knew or could reasonably have been expected to be aware of the circumstances giving rise to such increased costs or reductions and of the fact that such circumstances would in fact result in a claim for increased compensation by reason of such increased costs or reductions; provided further that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any law, regulation, rule, guideline or directive as aforesaid within such four-month period. The protection of this Section 2.14 shall be available to each Lender and the Issuing Bank regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, agreement, guideline or other change or condition that shall have occurred or been imposed.

SECTION 2.15. Change in Legality. (a) Notwithstanding any other provision of this Agreement, if, after the date hereof, any change in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof shall make it unlawful for any Lender to make or maintain any Eurocurrency Loan or Alternative Currency Loan, or to give effect to its obligations as contemplated hereby with respect

to any Eurocurrency Loan, then, by written notice to the Borrower and to the Administrative Agent:

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(i) such Lender may declare that Eurocurrency Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods and ABR Loans will not thereafter (for such duration) be converted into LIBOR Loans), whereupon any request for a Eurocurrency Borrowing (or to convert an ABR Borrowing to a LIBOR Borrowing or to continue a LIBOR Borrowing or EURIBOR Borrowing for an additional Interest Period) shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such for an additional Interest Period or to convert a LIBOR Loan into an ABR Loan, as the case may be), unless such declaration shall be subsequently withdrawn; and

(ii) such Lender may require that all outstanding LIBOR Loans made by it be converted to ABR Loans and all EURIBOR Term Loans made by it converted to ABR Loans (with all remaining payment obligations of the Borrower with respect thereto denominated in Dollars based on the Dollar Equivalent of the outstanding amounts on the date of such conversion), in which event all such LIBOR Loans and EURIBOR Term Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below.

In the event any Lender shall exercise its rights under (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurocurrency Loans that would have been made by such Lender or the converted LIBOR Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurocurrency Loans.

(b) For purposes of this Section 2.15, a notice to the Borrower by any Lender shall be effective as to each Eurocurrency Loan made by such Lender, if lawful, on the last day of the Interest Period currently applicable to such Eurocurrency Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.16. Indemnity. The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurocurrency Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any LIBOR Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurocurrency Loan, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurocurrency Loan to be made by such Lender (including any LIBOR Loan to be made pursuant to a conversion or continuation under Section 2.10) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurocurrency Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.16 shall be delivered to the Borrower and shall be conclusive absent manifest error.

SECTION 2.17. Pro Rata Treatment. Except as provided below in this Section 2.17 with respect to Swingline Loans and as required under Sections 2.13(j) and 2.15, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Commitment Fees, each reduction of the Term Loan Commitments or the Revolving Credit Commitments and each conversion of

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any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). For purposes of determining the available Revolving Credit Commitments of the Lenders at any time, each outstanding Swingline Loan shall be deemed to have utilized the Revolving Credit Commitments of the Lenders (including those Lenders which shall not have made Swingline Loans) pro rata in accordance with such respective Revolving Credit Commitments. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

SECTION 2.18. Sharing of Setoffs. Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans or L/C Disbursement as a result of which the unpaid principal portion of its Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and participations in L/C Disbursements shall be proportionately less than the unpaid principal portion of the Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and participations in L/C Disbursements of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure, as the case may be, of such other Lender, so that the aggregate unpaid principal amount of the Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure and participations in Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure then outstanding as the principal amount of its Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Tranche A Term Loans, Tranche B Term Loans and Revolving Loans and L/C Exposure outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.18 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Term Loan or Revolving Loan or L/C Disbursement deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

SECTION 2.19. Payments. (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any L/C Disbursement or any Fees or other amounts) hereunder and under any other Loan Document not later than 12:00 (noon), New York City time, on the date when due in immediately available dollars, without setoff, defense or counterclaim. Each such payment (other than (i) Issuing Bank Fees, which shall be paid directly to the Issuing Bank, and (ii) principal of and interest on Swingline Loans, which shall be paid directly to the Swingline Lender except as otherwise provided in Section 2.22(e)) shall be made to the Administrative Agent at its offices at Eleven Madison Avenue, New York, New York or as otherwise specified to be promptly distributed by the Administrative Agent as provided in Article VIII.

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(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

(c) All payments of principal and interest with respect to Alternative Currency Loans shall be made in the applicable Alternative Currency unless such Loans shall have been converted pursuant to Section 2.15(a)(ii).

SECTION 2.20. Taxes. (a) Any and all payments by or on account of any obligation of the Borrower or any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower or any Loan Party shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower or such Loan Party shall make such deductions and (iii) the Borrower or such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account

of any obligation of the Borrower or any Loan Party hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender, or by the Administrative Agent on its behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

(f) If the Administrative Agent or any Lender receives a refund in respect of Indemnified Taxes or Other Taxes paid by the Borrower, which in the good faith judgment of the Administrative Agent or such

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Lender is allocable to such payment, it shall promptly pay such refund, together with any other amounts paid by the Borrower in connection with such refunded Indemnified Taxes or Other Taxes, to the Borrower, net of all out-of-pocket expenses (including any Taxes to which such Lender has become subject as a result of its receipt of such refund) of the Administrative Agent or such Lender incurred in obtaining such refund and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower agrees to promptly return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or the applicable Lender, as the case may be, if it receives notice from the Administrative Agent or the applicable Lender that the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Nothing contained in this Section 2.20(f) shall require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems to be confidential) to the Borrower or any other person.

(g) Notwithstanding anything to the contrary in this Section, if the Internal Revenue Service determines that a Lender is participating in a conduit financing arrangement as defined in Section 7701(l) of the Code and the regulations thereunder (a "Conduit Financing Arrangement"), then (i) any Taxes that the Borrower is required to withhold from payments to such Lender shall be excluded from the definition of "Indemnified Taxes" and (ii) such Lender shall indemnify the Borrower in full for any and all Taxes for which the Borrower is held directly liable under Section 1461 of the Code by virtue of such Conduit Financing Arrangement. Each Lender represents that it is not participating in a Conduit Financing Arrangement.

SECTION 2.21. Assignment of Commitments Under Certain Circumstances; Duty to Mitigate. (a) In the event (i) any Lender or the Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.14, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrower is required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank pursuant to Section 2.20, the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 9.04(b)), upon notice to such Lender or the Issuing Bank and the Administrative Agent, require such Lender or the Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (x) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Credit Commitment is being assigned, of the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, and (z) the Borrower or such assignee shall have paid to the affected Lender or the Issuing Bank in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans or L/C Disbursements of such Lender or the Issuing Bank and the Swingline Lender, respectively, plus all Fees and other amounts accrued for the account of such Lender or the Issuing Bank hereunder (including any amounts under Section 2.14 and Section 2.16); provided further that, if prior to any

such transfer and assignment the circumstances or event that resulted in such Lender's or the Issuing Bank's claim for compensation under Section 2.14 or notice under Section 2.15 or the amounts paid pursuant to Section 2.20, as the case may be, cease to cause such Lender or the Issuing Bank to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.15, or cease to result in amounts being payable under Section 2.20, as the case may be (including as a result of any action taken by such Lender or the Issuing Bank pursuant to paragraph (b) below), or if such Lender or the Issuing Bank shall waive its right to claim further compensation under Section 2.14 in respect of such circumstances or event or shall withdraw its notice under Section 2.15 or shall waive its right to further payments under Section 2.20 in respect of such circumstances

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or event, as the case may be, then such Lender or the Issuing Bank shall not thereafter be required to make any such transfer and assignment hereunder.

(b) If (i) any Lender or the Issuing Bank shall request compensation under Section 2.14, (ii) any Lender or the Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrower is required to pay any additional amount to any Lender or the Issuing Bank or any Governmental Authority on account of any Lender or the Issuing Bank, pursuant to Section 2.20, then such Lender or the Issuing Bank shall use reasonable efforts (which shall not require such Lender or the Issuing Bank to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrower or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would materially reduce its claims for compensation under Section 2.14 or enable it to withdraw its notice pursuant to Section 2.15 or would materially reduce amounts payable pursuant to Section 2.20, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the Issuing Bank in connection with any such filing or assignment, delegation and transfer.

SECTION 2.22. Swingline Loans. (a) Swingline Commitment. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, the Swingline Lender agrees to make loans to the Borrower at any time and from time to time on and after the Closing Date and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitments in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of all Swingline Loans exceeding \$5,000,000 or (ii) the Aggregate Revolving Credit Exposure, after giving effect to any Swingline Loan, exceeding the Total Revolving Credit Commitment. The initial Swingline Loan shall be in a principal amount that is no less than \$500,000 and thereafter each subsequent Swingline Loan may be in an integral multiple of \$100,000. The Swingline Commitment may be terminated or reduced from time to time as provided herein. Within the foregoing limits, the Borrower may borrow, pay or prepay and reborrow Swingline Loans hereunder, subject to the terms, conditions and limitations set forth herein.

(b) Swingline Loans. The Borrower shall notify the Administrative Agent by telecopy, or by telephone (confirmed by telecopy), not later than 12:00 p.m., New York City time, on the day of a proposed Swingline Loan. Such notice shall be delivered on a Business Day, shall be irrevocable and shall refer to this Agreement and shall specify the requested date (which shall be a Business Day) and amount of such Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any notice received from the Borrower pursuant to this paragraph (b). The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to an account as directed by the Borrower in the notice requesting such Swingline Loan on the date such Swingline Loan is so requested.

(c) Prepayment. The Borrower shall have the right at any time and from time to time to prepay any Swingline Loan, in whole or in part, upon giving written or telecopy notice (or telephone notice promptly confirmed by written, or telecopy notice) to the Swingline Lender and to the Administrative Agent before 12:00 (noon), New York City time on the date of prepayment at the Swingline Lender's address for notices specified in Schedule 2.01. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment, payable on the last Business Day of the Interest Period applicable to ABR Loans.

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(d) Interest. Each Swingline Loan shall be an ABR Loan and, subject to the provisions of Section 2.07, shall bear interest as provided in Section 2.06(a).

(e) Participations. The Swingline Lender may by written notice given to the Administrative Agent not later than 11:00 a.m., New York City time, on any Business Day require the Revolving Credit Lenders to acquire participations on

such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Credit Lenders will participate. The Administrative Agent will, promptly upon receipt of such notice, give notice to each Revolving Credit Lender, specifying in such notice such Lender's Pro Rata Share of such Swingline Loan or Loans. In furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Revolving Credit Lender's Pro Rata Share of such Swingline Loan or Loans. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(c) with respect to Loans made by such Lender (and Section 2.02(c) shall apply, mutatis mutandis, to the payment obligations of the Lenders) and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower (or other party liable for obligations of the Borrower) of any default in the payment thereof.

SECTION 2.23. Letters of Credit. (a) General. The Borrower may request the issuance of a Letter of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time while the Revolving Credit Commitments remain in effect. This Section shall not be construed to impose an obligation upon the Issuing Bank to issue any Letter of Credit that is inconsistent with the terms and conditions of this Agreement.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. In order to request the issuance of a Letter of Credit (or to amend, renew or extend an existing Letter of Credit), the Borrower shall hand deliver or telecopy to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if, and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that, after giving effect to such issuance, amendment, renewal or extension (i) the L/C Exposure shall not exceed \$17,000,000 and (ii) the Aggregate Revolving Credit Exposure shall not exceed the Total Revolving Credit Commitment.

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(c) Expiration Date. Each Letter of Credit shall expire at the close of business on the earlier of the date one year after the date of the issuance of such Letter of Credit and the date that is five Business Days prior to the Revolving Credit Maturity Date, unless such Letter of Credit expires by its terms on an earlier date.

(d) Participations. By the issuance of a Letter of Credit and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Credit Lender, and each such Lender hereby acquires from the applicable Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit, effective upon the issuance of such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Share of each L/C Disbursement made by the Issuing Bank and not reimbursed by the Borrower (or, if applicable, another party pursuant to its obligations under any other Loan Document) forthwith on the date due as provided in Section 2.02(e). Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default

or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall pay to the Administrative Agent an amount equal to such L/C Disbursement not later than the end of the day on which the Borrower shall have received notice from the Issuing Bank that payment of such draft will be made, or, if the Borrower shall have received such notice later than 10:00 a.m., New York City time, on any Business Day, not later than 10:00 a.m., New York City time, on the immediately following Business Day.

(f) Obligations Absolute. The Borrower's obligations to reimburse L/C Disbursements as provided in paragraph (e) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;

(ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document;

(iii) the existence of any claim, setoff, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any Subsidiary or other Affiliate thereof or any other person may at any time have against the beneficiary under any Letter of Credit, the Issuing Bank, the Administrative Agent or any Lender or any other person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

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(vi) any other act or omission to act or delay of any kind of the Issuing Bank, the Lenders, the Administrative Agent or any other person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the absolute and unconditional obligation of the Borrower hereunder to reimburse L/C Disbursements will not be excused by the bad faith, gross negligence or wilful misconduct of the Issuing Bank. However, the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's bad faith, gross negligence or wilful misconduct in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; it is understood that the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit (i) the Issuing Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute bad faith, wilful misconduct or gross negligence of the Issuing Bank.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall as promptly as possible give telephonic notification, confirmed by telecopy, to the Administrative Agent and the Borrower of such demand for payment and whether the Issuing Bank has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Credit Lenders with respect to any such L/C Disbursement. The Administrative

Agent shall promptly give each Revolving Credit Lender notice thereof.

(h) Interim Interest. If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, then, unless the Borrower shall reimburse such L/C Disbursement in full on such date, the unpaid amount thereof shall bear interest for the account of the Issuing Bank, for each day from and including the date of such L/C Disbursement, to but excluding the earlier of the date of payment by the Borrower or the date on which interest shall commence to accrue thereon as provided in Section 2.02(e), at the rate per annum that would apply to such amount if such amount were an ABR Revolving Loan.

(i) Resignation or Removal of the Issuing Bank. The Issuing Bank may resign at any time by giving 180 days' prior written notice to the Administrative Agent, the Lenders and the Borrower, and may be removed at any time by the Borrower by notice to the Issuing Bank, the Administrative Agent and the Lenders. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Bank hereunder by a Lender that shall agree to serve as successor Issuing Bank, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Bank and the retiring Issuing Bank shall be discharged from its obligations to issue additional Letters of Credit hereunder. At the time such

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removal or resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 2.05(c)(ii). The acceptance of any appointment as the Issuing Bank hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Bank under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or removal of the Issuing Bank hereunder, the retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or removal, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, the Borrower shall, on the Business Day it receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit) thereof and of the amount to be deposited, deposit in an account with the Collateral Agent, for the benefit of the Revolving Credit Lenders, an amount in cash equal to the L/C Exposure as of such date. Such deposit shall be held by the Collateral Agent as collateral for the payment and performance of the Obligations. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits in Cash Equivalents, which investments shall be made at the option and sole discretion of the Collateral Agent, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall (i) automatically be applied by the Administrative Agent to reimburse the Issuing Bank for L/C Disbursements for which it has not been reimbursed, (ii) be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Exposure at such time and (iii) if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Credit Lenders holding participations in outstanding Letters of Credit representing greater than 50% of the aggregate undrawn amount of all outstanding Letters of Credit), be applied to satisfy the Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Additional Issuing Banks. The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be the Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Loan Documents to the term "Issuing Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank, as the context shall require.

SECTION 2.24. Borrowing Subsidiaries. The Borrower, may, from time to time, designate any person which is or becomes a Domestic Subsidiary or Foreign Subsidiary to be a Subsidiary Borrower pursuant to this Section 2.24 effective on a date not later than thirty days after written notice to Administrative

Agent accompanied by (a) an Assumption Agreement in the form of Exhibit J attached hereto executed by such Subsidiary and acknowledged by the Borrower and each Subsidiary Guarantor, (b) a certificate of good standing (or equivalent thereof, if any) of such Subsidiary in the jurisdiction of its organization, (c) certified resolutions of the Board of Directors of such Subsidiary authorizing the execution and delivery of the Assumption Agreement, and any other documents required to be delivered by this Section 2.24 or Section 5.11, and (d) such other information,

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certificates or legal opinions as Administrative Agent reasonably may request; provided, the maximum aggregate amount of Loans in respect of which Foreign Subsidiaries may be Subsidiary Borrowers shall not exceed the Dollar Equivalent of \$30,000,000; provided, further, any such designation pursuant to this Section 2.24 shall in no event be deemed to reduce the obligations in any manner or respect of any party to the Loan Documents or to release any party to the Loan Documents.

SECTION 2.25. Additional Loan. (a) So long as no Default has occurred and is continuing, at any time prior to the Tranche B Maturity Date, the Borrower may request an additional commitment of up to an aggregate principal amount of \$50,000,000 (the "Additional Loan Commitment"). No Lender or other

Person shall be obligated to provide any Additional Loan Commitment. The Administrative Agent shall assist and cooperate with (but shall not be obligated to provide an Additional Loan Commitment to) the Borrower in connection with obtaining the Additional Loan Commitments. All Additional Loan Commitments will be issued on the same date.

(b) The Administrative Agent, in consultation with the Borrower, will attempt to identify Persons to provide the Additional Loan Commitments (it being understood that all such Persons will be required to satisfy the criteria of a "Lender" hereunder). Additional Loan Commitments may, subject to the foregoing, be made by existing Lenders or new Lenders (each, an "Additional Lender") that

will be required to become a party to this Agreement in connection with the issuance of an Additional Loan Commitment. The aggregate amount of all Additional Loan Commitments shall not exceed \$50,000,000. The existing Lenders and the Additional Lenders which agree to provide Additional Loan Commitments are collectively referred to herein as the "Tranche C Term Loan Lenders."

(c) The Additional Loan Commitments shall become effective upon the receipt by the Administrative Agent of an agreement in form and substance satisfactory to the Administrative Agent signed by the Borrower and by each Additional Loan Lender, setting forth the Additional Loan Commitments of such Tranche C Term Loan Lenders, the maturity, amortization and interest rates applicable to the Additional Loans and the agreement of each Additional Lender to become a party to this Agreement and to be bound by all the terms and provisions hereof, together with such evidence of appropriate corporate authorization on the part of the Borrower with respect to the Additional Loan Commitments and such opinions of counsel for the Borrower with respect to the Additional Loan Commitments and such agreements as the Administrative Agent may reasonably request. So long as no Default is in existence or would result therefrom, the Borrower may borrow once in a single draw under the Additional Loan Commitments by following the procedures with respect to Credit Events set forth herein (each such loan made by an Additional Loan Lender, a "Tranche C Term Loan"). The

Tranche C Term Loans shall have a final maturity no earlier than the Tranche B Term Loans (any such date, the "Tranche C Maturity Date") and none of the terms

of the Tranche C Term Loans shall be more favorable to the Lenders thereof than the terms applicable to the Tranche B Term Loans.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders that:

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SECTION 3.01. Organization; Powers. The Borrower and each of the Subsidiaries (a) is duly organized, validly existing and in good standing or active status under the laws of the jurisdiction of its organization (except Baraboo Equipment Corporation, an inactive Subsidiary, is not in active status in the State of Wisconsin), (b) has all requisite power and authority to own its Property and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to result in a Material Adverse Effect, and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or

instrument contemplated hereby to which it is or will be a party and, in the case of the Borrower, to borrow hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by each Loan Party of each of the Loan Documents and the consummation by the Loan Parties of the Transactions (including the borrowings hereunder) (a) have been duly authorized by all requisite corporate and, if required, stockholder action and (b) will not (i) violate (A) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Borrower or any Subsidiary, (B) any order of any Governmental Authority or (C) any provision of any indenture, agreement or other instrument to which the Borrower or any Subsidiary is a party or by which any of them or any of their Property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Borrower or any Subsidiary (other than any Lien created hereunder or under the Security Documents).

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by the each Loan Party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, except for (a) the filing of UCC financing statements, (b) recordation of the Mortgages, (c) such as have been made or obtained and are in full force and effect and (d) those filings required to be made following the Closing Date which are set forth on Schedule 3.04.

SECTION 3.05. Financial Statements. (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheets and related statements of income, stockholder's equity and cash flows (x) as of and for the fiscal year ended August 31, 1999, audited by and accompanied by the opinion of PricewaterhouseCoopers LLP, independent public accountants, and (y) as of and for the fiscal quarter ended May 31, 2000, certified by its chief financial officer. Such financial statements present fairly the financial condition and results of operations and cash flows of the Borrower and the Subsidiaries as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of the Borrower and the Subsidiaries as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis.

(b) The Borrower has heretofore delivered to the Lenders its unaudited pro forma consolidated balance sheet and related statement of income as of February 29, 2000, prepared giving effect to the Transactions as if they had occurred, with respect to such balance sheet, on such date, and with respect to such income statement, on September 1, 1999. Such pro forma financial statements have been prepared in good faith by the

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Borrower, based on the assumptions used to prepare the pro forma financial information contained in the Confidential Information Memorandum (which assumptions are believed by the Borrower on the date hereof and on the Closing Date to be reasonable), are based on the best information available to the Borrower as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Transactions and present fairly on a pro forma basis the estimated consolidated financial position of the Borrower and its consolidated Subsidiaries as of such dates, assuming that the Transactions had actually occurred at such dates.

(c) The Borrower has heretofore delivered to the Lenders, projections for each fiscal year beginning with the fiscal year ending August 31, 2000 and through and including the fiscal year ending August 31, 2008. Such projections have been prepared in good faith by the Borrower, based on the best information available to the Borrower as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Transactions.

SECTION 3.06. No Material Adverse Change. There has been no material adverse change in the business, results of operations, prospects, condition, financial or otherwise, or material agreements of the Borrower and the Subsidiaries, taken as a whole, since August 31, 1999.

SECTION 3.07. Title to Properties; Possession Under Leases. (a) Schedule 3.07(a)(i) contains a true and complete list of each parcel of Real Property owned by the Borrower and/or any Subsidiary as of the date hereof and describes the interest therein held by the Borrower and/or the Subsidiary. Schedule 3.07(a)(ii) contains a true and complete list of each parcel of Real Property leased, subleased or otherwise occupied or utilized by the Borrower

and/or any Subsidiary as of the date hereof and describes the interest therein held by Borrower and/or the Subsidiary. Each of the Borrower and the Subsidiaries has in the case of the Real Properties set forth in Schedule 3.07(a)(i) good, indefeasible and marketable title to, or in the case of the Real Properties set forth in Schedule 3.07(a)(ii) valid, substituting, marketable and insurable leasehold interests in, all its Real Property, free and clear of all Liens, other than Prior Liens expressly permitted by the applicable Mortgage.

(b) Each lease or sublease of Real Property is valid and in full force and effect and neither the Borrower nor any Subsidiary is in default under any such lease or sublease and, to the knowledge of the Borrower or any Subsidiary, the other party or parties thereto are not in any material respect in default of its or their obligations thereunder, except that the tenant under the lease for 3757 Falls Mill Road, Mobile, Alabama has vacated the premises. The Borrower and/or a Subsidiary is in possession of all the Real Property except with respect to portions thereof subleased to third parties in the ordinary course of business and in accordance with the provisions of the applicable Security Document, except that the tenant under the lease for 3757 Falls Mill Road, Mobile, Alabama has vacated the premises.

(c) Title to all Property (other than Real Property) is held by the Borrower and/or a Subsidiary free and clear of all Liens except for Prior Liens and other Liens expressly permitted to exist on such type of Property pursuant to the terms of the applicable Security Document.

(d) The Property of the Borrower and the Subsidiaries, taken as a whole, is in good operating order, condition and repair (ordinary wear and tear excepted) and constitutes all the assets and properties which are required for the business and operations of the Borrower and the Subsidiaries as presently conducted.

(e) Except as set forth on Schedule 3.07(e), the Borrower, or any Subsidiary, has not received any notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting all or any portion of the Property or any sale or disposition thereof in lieu of condemnation.

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(f) None of the Borrower or any of the Subsidiaries is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Property or any interest therein.

SECTION 3.08. Subsidiaries. Schedule 3.08 sets forth as of the date hereof a list of all Subsidiaries and the percentage Equity Interest of the Loan Parties therein. The Equity Interests so indicated on Schedule 3.08 are fully paid and non-assessable and are owned by the Borrower or the applicable Subsidiary Guarantor, directly or indirectly, free and clear of all Liens other than Liens created by the Security Agreement. The Subsidiary Guarantors listed on Schedule 1.01(b) constitute all of the Domestic Subsidiaries with annual sales or assets in excess of \$5,000,000 as of the Closing Date.

SECTION 3.09. Litigation; Compliance with Laws. (a) Except as set forth on Schedule 3.09 or Schedule 3.17, there are not any actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any Subsidiary or any business, Property or rights of any such person (i) that involve any Loan Document or the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for matters covered by Section 3.17, none of the Borrower or any of the Subsidiaries or any of their respective Property is in violation of, nor will the continued operation of their property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting the Property, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. Agreements. (a) None of the Borrower or any of the Subsidiaries is a party to any agreement or instrument or subject to any corporate restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(b) None of the Borrower or any of the Subsidiaries is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its Properties are or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.10 accurately and completely lists all material agreements (other than leases of Real Property otherwise set forth on Schedule 3.07(a)(ii)) to which the Borrower and any Subsidiary are a party which are in effect on the

Closing Date in connection with the operation of the business conducted thereby.

SECTION 3.11. Federal Reserve Regulations. (a) None of the Borrower or any of the Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation T, U or X.

SECTION 3.12. Investment Company Act; Public Utility Holding Company Act. None of the Borrower or any Subsidiary is (a) an "investment company" as defined in, or subject to regulation under, the In-

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vestment Company Act of 1940 or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.13. Use of Proceeds. The Borrower will use the proceeds of the Loans and will request the issuance of Letters of Credit only for the purposes specified in the preamble to this Agreement.

SECTION 3.14. Tax Returns. Each of the Borrower and the Subsidiaries has filed or caused to be filed all Federal tax returns and all material, state, local and foreign tax returns or materials required to have been filed by it and has paid or caused to be paid all taxes due and payable by it and all assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, shall have set aside on its books adequate reserves and except with respect to any taxes for which the Borrower has provided indemnification to APW, Ltd. as set forth on Schedule 3.14.

SECTION 3.15. No Material Misstatements. None of (a) the Confidential Information Memorandum or (b) any other information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, or will omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading as of the date such information is dated or certified; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.16. Employee Benefit Plans. (a) Each of the Borrower and its ERISA Affiliates is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in material liability of the Borrower or any of its ERISA Affiliates. The present value of all benefit liabilities under each Plan (based on those assumptions used to fund such Plan) did not, as of the last annual valuation date applicable thereto, exceed by more than \$200,000 the fair market value of the assets of such Plan, and the present value of all benefit liabilities of all underfunded Plans (based on those assumptions used to fund each such Plan) did not, as of the last annual valuation dates applicable thereto, exceed by more than \$200,000 the fair market value of the assets of all such underfunded Plans.

(b) Each Foreign Pension Plan is in compliance in all material respects with all requirements of law applicable thereto and the respective requirements of the governing documents for such plan except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Effect. With respect to each Foreign Pension Plan, none of the Borrower, its Affiliates or any of its directors, officers, employees or agents has engaged in a transaction that subject the Borrower or any of the Subsidiaries, directly or indirectly, to a material tax or civil penalty. With respect to each Foreign Pension Plan, reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained. The aggregate unfunded liabilities, with respect to such Foreign Pension Plans could not reasonably be expected to result in a Material Adverse Effect. There are no actions, suits or claims (other than routine claims for benefits) pending or threatened against the Borrower or any of its Affiliates with respect to any Foreign Pension Plan which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 3.17. Environmental Matters. Except as set forth in Schedule 3.17:

(a) The properties owned or operated by the Borrower and the Subsidiaries (the "Real Properties") do not contain any Hazardous Materials in amounts or concentrations which (i) constitute, or constituted a violation of, (ii) require Remedial Action under, or (iii) could give rise to liability under, Environmental Laws, which violations, Remedial Actions and liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(b) The Real Properties and all operations of the Borrower and the Subsidiaries are in compliance, and in the last six years have been in compliance, with all Environmental Laws and all necessary Environmental Permits have been obtained and are in effect, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(c) There have been no Releases or threatened Releases by the Borrower or any Subsidiary or, to their knowledge, by any other party, at, from, under or proximate to the Real Properties or otherwise in connection with the operations of the Borrower or the Subsidiaries, which Releases or threatened Releases, in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(d) None of the Borrower or any of the Subsidiaries has received any notice of an Environmental Claim in connection with the Real Properties or the operations of the Borrower or the Subsidiaries or with regard to any person whose liabilities for environmental matters the Borrower or the Subsidiaries has retained or assumed, in whole or in part, contractually, by operation of law or otherwise, which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect; and

(e) Hazardous Materials have not been transported from the Real Properties by or on behalf of the Borrower or any Subsidiary, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the Real Properties in a manner that could give rise to liability under any Environmental Law, nor have the Borrower or the Subsidiaries retained or assumed any liability, contractually or by operation of law, with respect to the generation, treatment, storage or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by the Borrower or by the Borrower for its Subsidiaries as of the Closing Date. As of such date, such insurance is in full force and effect and all premiums have been duly paid. The Borrower and its Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.19. Security Documents. (a) The Security Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Pledged Collateral and, when (i) financing statements in appropriate form are filed in the offices specified on Schedule 3.3 to the Security Agreement and (ii) the Securities Collateral (as defined in the Security Agreement) is delivered to the Collateral Agent, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Pledged Collateral (other than the Intellectual Property, as defined in the Security Agreement), in each case prior and superior in right to any other

person, other than holders of Prior Liens and subject to no other Liens except for Liens expressly permitted to exist on such Pledged Collateral by the terms of the Security Agreement.

(b) When the Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Intellectual Property Collateral (as defined in the Security Agreement), in each case prior and superior in right to any other person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks, trademark applications and copyrights acquired by the grantors after the date hereof), other than holders of Prior Liens and subject to no other Liens except for Liens expressly permitted to exist on such Pledged Collateral

by the terms of the Security Agreement.

(c) The Mortgages are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Loan Parties' right, title and interest in and to the Mortgaged Property thereunder, and when the Mortgages are filed in the offices specified on Schedule 3.19(c), the Mortgages shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Mortgaged Property, in each case prior and superior in right to any other person, other than holders of Prior Liens and subject to no other Lien except for Liens expressly permitted to exist on such Mortgaged Property by the terms of the applicable Mortgage.

SECTION 3.20. Labor Matters. As of the date hereof and the Closing Date, there are no strikes, lockouts or slowdowns against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters in any manner which could reasonably be expected to have a Material Adverse Effect. All payments due from the Borrower or any Subsidiary, or for which any claim may be made against the Borrower or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Subsidiary is bound.

SECTION 3.21. Solvency. Immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of the Loan Parties taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties taken as a whole will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties taken as a whole will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties taken as a whole will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

SECTION 3.22. Representations and Warranties in Documents. All representations and warranties set forth in the other Loan Documents and the Transaction Documents were true and correct in all material respects at the time as of which such representations and warranties were made (or deemed made), provided that to the extent the representations and warranties in the Transaction Documents are made by persons other than the Loan

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Parties, then the representations and warranties so made by such persons shall be deemed to be true and correct in all material respects for purposes of this Section 3.22 unless the aggregate effect of all misrepresentations made by such other persons in the Transaction Documents are such as would evidence a material adverse change in the operations, properties, condition (financial or otherwise) or prospects of the Borrower from that which would have applied if all representations made by such other persons in the Transaction Documents had been true and correct in all respects.

SECTION 3.23. Letters of Credit. The Existing L/C and the trade letters of credit referred to on Schedule 6.01 are the only letters of credit issued for the account of the Borrower or any of the Subsidiaries which are outstanding immediately prior to the Closing Date and will remain outstanding after the Closing Date.

SECTION 3.24. Contingent Obligations. All contingent obligations incurred in connection with the Spin-Off are in such amounts as are set forth on Schedule 6.01.

ARTICLE IV

Conditions of Lending

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01. All Credit Events. On the date of each Borrowing, including each Borrowing of a Swingline Loan, and on the date of each issuance, amendment, extension or renewal of a Letter of Credit (each such event being called a

"Credit Event"):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.23(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.22(b).

(b) The representations and warranties set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(c) The Borrower and each other Loan Party shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and at the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

(d) There shall not have occurred or become known to the Administrative Agent any event or events, adverse condition or change in or affecting the Loan Parties, or any of them, that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

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Each Credit Event shall be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (b), (c) and (d) (other than with respect to the knowledge of the Administrative Agent) of this Section 4.01.

SECTION 4.02. First Credit Event. On the Closing Date:

(a) The Administrative Agent shall have received, on behalf of itself, the Lenders and the Issuing Bank, a favorable written opinion of (i) Quarles & Brady, special counsel for the Borrower, substantially to the effect set forth in Exhibit H, and (ii) each local counsel listed on Schedule 4.02(a), substantially to the effect set forth in Exhibit I, in each case (A) dated the Closing Date, (B) addressed to the Issuing Bank, the Administrative Agent, the Collateral Agent and the Lenders, and (C) covering such other matters relating to the Loan Documents and the Transactions as the Administrative Agent or the Collateral Agent shall reasonably request, and the Borrower hereby requests such counsel to deliver such opinions.

(b) All legal matters incident to this Agreement, the Borrowings and extensions of credit hereunder and the other Loan Documents shall be reasonably satisfactory to the Lenders, to the Issuing Bank and to the Administrative Agent.

(c) The Administrative Agent shall have received (i) a copy of the certificate or articles of incorporation, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State of the state of its organization, and a certificate as to the good standing of each Loan Party as of a recent date, from such Secretary of State; (ii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party; (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to (ii) above; and (iv) such other documents as the Lenders, the Issuing Bank or the Administrative Agent may reasonably request.

(d) The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Financial Officer of the Borrower, confirming compliance with the conditions precedent set forth in paragraphs

(b), (c) and (d) (other than with respect to the knowledge of the Administrative Agent) of Section 4.01.

(e) The Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document.

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(f) The Security Agreement shall have been duly executed by the Loan Parties party thereto and shall have been delivered to the Collateral Agent and shall be in full force and effect on such date and all certificates, agreements or instruments representing or evidencing the Securities Collateral (as defined in the Security Agreement), accompanied by instruments of transfer and stock powers endorsed in blank, shall have been delivered to the Collateral Agent; provided that to the extent to do so would cause adverse tax consequences to the Borrower, (i) neither the Borrower nor any Domestic Subsidiary shall be required to pledge more than 65% of the voting stock of any Foreign Subsidiary and (ii) no Foreign Subsidiary shall be required to pledge the capital stock of any of its Foreign Subsidiaries.

(g) The Collateral Agent shall have received Mortgages with respect to each Mortgaged Property and such Mortgages shall be in full force and effect on such date, together with each document required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded or delivered to the Collateral Agent in order to create in favor of the Collateral Agent for the benefit of the Secured Parties a valid, legal and perfected first-priority security interest in and Lien on the Mortgaged Property; provided, however, that if the underlying lease

relating to any leasehold Mortgaged Property by its terms or by operation of law cannot be mortgaged, pledged or assigned as contemplated herein without the consent of the lessor thereunder, the Borrower shall use its commercially reasonable efforts to obtain such consent as soon as practicable but in no event later than 60 days from the date hereof; provided, however, that if, notwithstanding the use of its commercially

reasonable efforts, the Borrower and/or the applicable Domestic Subsidiary shall fail to obtain such consent such failure shall not result in a Default hereunder.

(h) The Borrower and each Subsidiary shall have authorized, executed and/or delivered or caused to be delivered each of the following to the Collateral Agent:

(1) UCC Financing Statements (Form UCC-1 or UCC-2, as appropriate) in appropriate form for filing under the UCC and any other applicable Requirements of Law in each jurisdiction as may be necessary or appropriate to perfect the Liens created, or purported to be created, by the Security Documents;

(2) certified copies of Requests for Information (Form UCC-11), tax lien, judgment lien and pending lawsuit searches or equivalent reports or lien search reports, each of a recent date listing all effective financing statements, lien notices or comparable documents that name the Borrower or any Subsidiary as debtor and that are filed in those state and county jurisdictions in which any of the Property of the Borrower or any Subsidiary is located and the state and county jurisdictions in which the Borrower's or any Subsidiary's principal place of business is located, none of which encumber the Collateral covered or intended to be covered by the Security Documents other than those encumbrances which constitute Prior Liens;

(3) with respect to each Real Property, copies of all leases, subleases, franchise agreements, licenses, occupancy agreements or concession agreements in which a Loan Party holds the landlord's interest or other agreements relating to possessory interests. To the extent any of the foregoing affect any Mortgaged Property, such agreement shall be subordinate to the Lien of the Mortgage to be recorded against such Real Property (either expressly by its terms or pursuant to a subordination, non-disturbance and attornment agreement acceptable to Collateral Agent) and shall otherwise be reasonably acceptable to the Collateral Agent;

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(4) evidence of the completion of all recordings and filings of, or with respect to, the Security Agreement, including filings with the United States Patent, Trademark and Copyright offices, and delivery of such other security and other documents including, without limitation, financial account consent letters and consents of

counterparties to contracts and leases, and the taking of all actions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect the Liens created, or purported to be created, by the Security Agreement, except for any of the foregoing to be provided after the Closing Date pursuant to Section 5.11 hereof;

(5) with respect to each Real Property, the appropriate Loan Party shall have made all notifications, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements as applicable to such Real Property, including the use of forms provided by state, local or foreign agencies, where such forms exist;

(6) with respect to each leased Real Property identified on Schedule 3.07(a)(ii) attached hereto, to the extent available, a

landlord lien waiver, consent (if applicable) and access agreement, substantially in the form of Exhibit L attached hereto;

(7) subject to Section 4.02(g), with respect to each Mortgaged Property, such consents, approvals, amendments, supplements, estoppels, tenant subordination agreements or other instruments as necessary or required to consummate the transactions contemplated hereby or as shall be reasonably deemed necessary by the Collateral Agent in order for the owner or holder of the fee or leasehold interest constituting such Mortgaged Property to grant the Lien contemplated by the Mortgage with respect to such Mortgaged Property;

(8) with respect to each Mortgage, a policy (or commitment to issue a policy) of title insurance issued by a Title Company insuring (or committing to insure) the Lien of such Mortgage as a valid first mortgage Lien on the Mortgaged Property and fixtures described therein in an amount not less than 100% of the fair market value thereof, which policy (or commitment) shall (w) be issued by the Title Company, (x) contain a "tie-in" or "cluster" endorsement (if available under applicable law) (i.e., policies which insure against losses regardless

of location or allocated value of the insured property up to a stated maximum coverage amount) and (y) have been supplemented by such endorsements, provided that such endorsements are available at commercially reasonable rates as shall be requested by the Collateral Agent (including, without limitation, endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity (but only with respect to such Mortgaged Real Property where there are existing Surveys), revolving credit, doing business, public road access, survey (but only with respect to such Mortgaged Real Property where there are existing Surveys), variable rate and so-called comprehensive coverage over covenants and restrictions) and (d) contain no exceptions to title other than exceptions for the Prior Liens permitted by the applicable Mortgage or that are satisfactory to the Collateral Agent; provided, however, that with respect to each policy (or commitment)

relating to leasehold Mortgaged Real Property, such endorsements shall be limited to matters relating to first loss, last dollar, variable rate and the so-called comprehensive coverage.

(9) with respect to each Mortgaged Property, a Survey, if required by the Title Company, sufficient to cause the Title Company to remove the survey and unrecorded ease-

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ment exceptions from the title insurance policy (or commitment) with respect to such Mortgaged Property;

(10) with respect to each Mortgaged Property, policies or certificates of insurance as required by the Mortgage relating thereto, which policies or certificates shall comply with the insurance requirements contained in such Mortgage;

(11) with respect to each Mortgaged Real Property, such affidavits, certificates, information (including financial data) and instruments of indemnification (including a so-called "gap" indemnification) as shall be required to induce the title company to issue the policy or policies (or commitment or commitments) and endorsements contemplated in subparagraph (8) above;

(12) evidence acceptable to the Collateral Agent of payment by the Loan Parties of all applicable title insurance premiums, search and examination charges, survey costs and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the title insurance policies referred to in subparagraph (8) above; and

(13) with respect to each Mortgaged Property, an Officer's Certificate substantially in the form of Exhibit K.

(i) Each of the Subsidiary Guarantee Agreement and the Indemnity, Subrogation and Contribution Agreement shall have been duly executed by the parties thereto, shall have been delivered to the Collateral Agent and shall be in full force and effect.

(j) The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.02 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable endorsement and to name the Collateral Agent as additional insured, in form and substance reasonably satisfactory to the Administrative Agent.

(k) After giving effect to the Transactions, and the affiliation agreements to be entered into in connection therewith, (A) the ratio of (a) Consolidated Indebtedness as of the Closing Date to (b) Consolidated EBITDA on a pro forma basis for the Transactions for the twelve-month period ending with the fiscal quarter immediately preceding the Closing Date shall not be greater than 4.0:1.00 and (B) the Consolidated EBITDA on a pro forma basis for the Transactions for the twelve-month period ending with the fiscal quarter ended February 29, 2000 shall be no less than \$111.9 million.

(l) The Transactions shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in all material respects in accordance with the terms hereof and the terms of the Transaction Documents, which shall be reasonably satisfactory to the Lenders (and without the waiver of any such terms not approved by the Administrative Agent (such approval not to be unreasonably withheld)).

(m) The New Senior Subordinated Notes shall be issued in the form required by the terms of the New Senior Subordinated Note Indenture, which shall be reasonably satisfactory to the Lenders

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and the Borrower shall have received (or have the unconditional right to receive) at least \$115.0 million in proceeds therefrom substantially contemporaneously with the initial Credit Event.

(n) The Administrative Agent shall have received an opinion (and related going concern valuation) reasonably satisfactory in all respects to the Administrative Agent from American Appraisal Associates, Inc. to the effect that, after giving effect to the Transactions, the Borrower and the Subsidiaries (taken as a whole) will not (i) be insolvent, (ii) be rendered insolvent by the indebtedness incurred in connection therewith, (iii) be left with unreasonably small capital with which to engage in their business or (iv) have incurred debts beyond their ability to pay such debts as they mature.

(o) After giving effect to the Transactions and the other transactions contemplated hereby, neither the Borrower nor any of the Subsidiaries shall have outstanding any Indebtedness or preferred stock other than (i) the Loans and extensions of credit hereunder and (ii) the New Senior Subordinated Notes.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will, and will cause each of the Subsidiaries to:

SECTION 5.01. Existence; Businesses and Properties. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently conducted and operated; comply with all applicable laws, rules, regulations (including any zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Properties) and decrees

and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and at all times maintain and preserve all Property material to the conduct of such business and keep such Property in good repair, working order and condition and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times.

SECTION 5.02. Insurance. (a) Keep its insurable Properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims

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for personal injury or death or property damage occurring upon, in, about or in connection with the use of any Properties owned, occupied or controlled by it; maintain such other insurance as may be required by law; and, with respect to Collateral, otherwise maintain all insurance coverage required under the applicable Security Documents.

(b) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.02 is taken out by the Borrower; and promptly deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

SECTION 5.03. Obligations and Taxes. Pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge and enforcement of a Lien and, in the case of Collateral, the Borrower or the applicable Subsidiary shall have otherwise complied with the provisions of the applicable Security Document in connection with such nonpayment.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year, its consolidated and consolidating balance sheet and related statements of income and cash flows showing the financial condition of the Borrower and the Subsidiary Guarantors and other Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiary Guarantors and other Subsidiaries during such year, all in reasonable detail and audited by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such consolidated financial statements fairly present in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, setting forth in each case in comparative form (i) the corresponding statements for the preceding fiscal year and (ii) the budget corresponding to such period previously provided pursuant to Section 5.04(f);

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its consolidated and consolidating balance sheet and related statements of income and cash flows showing the financial condition of the Borrower and the Subsidiary Guarantors and other Subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiary Guarantors and other Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, all in reasonable detail and certified by one of its Financial Officers as fairly presenting in all material respects the financial condition and results of operations of each of the Borrower and the Subsidiary Guarantors and other Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments, setting forth in each case in comparative

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form (i) the corresponding statements for the corresponding period in the preceding fiscal year and (ii) the budget corresponding to such period

previously provided pursuant to Section 5.04(f);

(c) (i) concurrently with any delivery of financial statements under sub-paragraph (a), (b) or (c) above, a certificate of a Financial Officer opining on or certifying such statements certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (ii) concurrently with any delivery of financial statements under sub-paragraph (a) or (b) above, a certificate of a Financial Officer opining on or certifying such statements setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Sections 6.08, 6.09, 6.10 and 6.11 and, in the case of paragraph (a) above, setting forth the Borrower's calculation of Excess Cash Flow and excess cash flow (as defined in the New Senior Subordinated Note Indenture) and (iii) in the case of paragraph (a) above, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of the Borrower and the Subsidiaries, which audit was conducted in accordance with GAAP, such accounting firm obtained no knowledge that any Event of Default or Default has occurred or, if in the opinion of such accounting firm such an Event of Default or Default has occurred, specifying the nature and extent thereof;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(e) promptly after the receipt thereof by the Borrower or any of the Subsidiaries, a copy of any "management letter" received by any such person from its certified public accountants and the management's responses thereto;

(f) no later than 45 days following the first day of each fiscal year of the Borrower, a budget in form reasonably satisfactory to the Administrative Agent (including budgeted statements of income by each of the Borrower's business segments and consolidated as to sources and uses of cash and balance sheets) prepared by the Borrower for each of the four quarters of such fiscal year prepared in the same level of detail as prepared for and delivered to the Borrower's Board of Directors, in each case, of the Borrower and the Subsidiaries, accompanied by the statement of a Financial Officer of the Borrower to the effect that the budget is a reasonable estimate for the period covered thereby.

(g) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent, the Issuing Bank and each Lender prompt written notice of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

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(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against the Borrower or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect; and

(d) (i) the incurrence of any Lien (other than Prior Liens and other Liens expressly permitted by the terms of the applicable Security Document) on, or Claim asserted against, any of the Collateral or (ii) the occurrence of any other event which could materially affect the value of the Collateral.

SECTION 5.06. Employee Benefits. (a) Comply in all material respects with the applicable provisions of ERISA and the Code and (b) furnish to the Administrative Agent (i) as soon as possible after, and in any event within 30 days after any Responsible Officer of the Borrower or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability

of the Borrower in an aggregate amount exceeding \$500,000, a statement of a Financial Officer of the Borrower setting forth details as to such ERISA Event and the action, if any, that the Borrower proposes to take with respect thereto.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all requirements of law are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the Properties of the Borrower, the Borrower or any Subsidiary at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of the Borrower, the Borrower or any Subsidiary with the officers thereof and independent accountants therefor.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in the preamble to this Agreement.

SECTION 5.09. Compliance with Environmental Laws. Comply, and use its best efforts to cause all lessees and other persons occupying its Properties to comply, with all Environmental Laws and Environmental Permits applicable to its operations and Properties; obtain and renew all material Environmental Permits necessary for its operations and Properties except where the failure to comply could not reasonably be expected to have a Material Adverse Effect; and conduct any Remedial Action in accordance with Environmental Laws; provided, however, that none of the Borrower, the Borrower or any of the Subsidiaries shall be required to undertake any Remedial Action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

SECTION 5.10. Preparation of Environmental Reports. If a Default caused by reason of a breach of Section 3.17 or 5.09 shall have occurred and be continuing for more than 25 days without the Borrower or the Subsidiaries commencing activities reasonably likely to cure such Default, at the written request of the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the ex-

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pense of the Borrower, an environmental site assessment report regarding the matters which are the subject of such default prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Remedial Action in connection with such Default.

SECTION 5.11. Further Assurances; Additional Collateral. (a) Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including, without limitation, filing UCC and other financing statements, mortgages and deeds of trust and filings with the United States Patent and Trademark Office and the United States Copyright Office) that may be required under applicable law, or that the Required Lenders, the Administrative Agent or the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority of the security interests created or intended to be created by the Security Documents.

(b) The Borrower will cause any existing or subsequently acquired or organized Domestic Subsidiary having annual sales or assets in excess of \$5,000,000 to execute a Subsidiary Guarantee Agreement, and the Borrower will cause any existing or subsequently acquired or organized Domestic Subsidiary to execute an Indemnity Subrogation and Contribution Agreement and each applicable Security Document in favor of the Collateral Agent as shall be necessary or appropriate to grant a first priority Lien on, and security interest in, the Property owned or held by such Domestic Subsidiary and to take all further action of the type described in this Section 5.11 in order to grant, preserve, protect and perfect such Lien and security interest.

(c) The parties hereto acknowledge and agree that it is their intention that the Obligations shall be secured by, among other things, a first priority Lien on substantially all the Property of the Borrower and the Domestic Subsidiaries (including, without limitation, real and other Property acquired subsequent to the Closing Date). Promptly, and in any event within 30 days after the acquisition of any Property by the Borrower and/or the Domestic Subsidiaries, the Borrower and/or the Domestic Subsidiaries will, at their sole cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, first priority perfected security interests with respect to such property (the "Additional Collateral"). Such security interests and Liens will be created under the Security Documents and other security agreements, mortgages, deeds of trust and other instruments and documents in form and substance reasonably satisfactory to the Collateral Agent, and the Borrower shall deliver or cause to be delivered to the Collateral Agent

all such instruments and documents (including, without limitation, legal opinions, title insurance policies, surveys, appraisals, certificates of title, consents and lien searches) as the Collateral Agent shall reasonably request to evidence compliance with this Section 5.11 (provided, however, that with respect

to any newly-acquired leasehold Real Property, the Borrower and/or Domestic Subsidiary acquiring such leasehold interest will mortgage, pledge or assign the underlying lease to the Collateral Agent at the request of the Collateral Agent if such Real Property is material to the business, operations or financial condition of the Borrower and/or Domestic Subsidiary in the reasonable determination of the Collateral Agent); provided, however, that if the

underlying lease relating to any leasehold Real Property interest acquired by the Borrower and/or the Domestic Subsidiaries by its terms or by operation of law cannot be mortgaged, pledged or assigned as contemplated herein without the consent of the lessor thereunder, the Borrower and/or Domestic Subsidiary acquiring such leasehold interest shall be required to use its commercially reasonable efforts to obtain such consent as soon as practicable but in no event later than 60 days from the date the Borrower and/or the Domestic Subsidiaries acquired such leasehold interest, however, the failure to obtain such consent shall not result in a Default hereunder.

(d) The Borrower agrees to, from time to time, provide such evidence as the Collateral Agent shall reasonably request as to the perfection and priority status of each security interest and Lien contemplated. In

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addition, pursuant to Section 2.24, the Borrower will cause the Assumption Agreement to be executed by the applicable Domestic or Foreign Subsidiary.

(e) With respect to each leased Real Property identified on Schedule 3.07(a)(ii) attached hereto, to the extent not delivered to the Collateral Agent

on the Closing Date, the Borrower will and will cause each Domestic Subsidiary to use its commercially reasonable efforts to obtain and deliver to the Collateral Agent, as soon as practicable but in no event later than 60 days from the Closing Date, a landlord lien waiver, consent (if applicable) and access agreement, substantially in the form of Exhibit L attached hereto; provided,

however, that if, notwithstanding the use of its commercially reasonable efforts, the Borrower and/or the applicable Domestic Subsidiary shall fail to obtain such landlord lien waiver such failure shall not result in a Default hereunder.

SECTION 5.12. Interest Rate Protection. No later than the 60th day after the Closing Date, the Borrower shall enter into, and for a minimum of two years thereafter maintain, Interest Rate Protection Agreements acceptable to the Administrative Agent that results in at least the lesser of 50% or \$200.0 million of the aggregate principal amount of the Borrower's Consolidated Indebtedness being effectively subject to a fixed or maximum interest rate reasonably acceptable to the Administrative Agent unless the Borrower shall have at least \$200.0 million aggregate principal amount of Consolidated Indebtedness incurred and outstanding in compliance with this Agreement that is subject to a fixed rate.

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been cancelled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, the Borrower will not, nor will it cause or permit any of the Subsidiaries to:

SECTION 6.01. Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Loan Documents; provided, that the Borrower may incur the Tranche C Term Loans in an aggregate principal amount of \$50,000,000 pursuant to Section 2.25, if at the time of the incurrence thereof the Senior Leverage Ratio, on a pro forma basis for such incurrence, is less than 2.50:1.00;

(b) Indebtedness of the Borrower pursuant to the New Senior Subordinated Notes issued on or before the Closing Date, in an aggregate principal amount not to exceed \$200,000,000, less the aggregate amount of all repayments of New Senior Subordinated Notes effected after the Closing Date;

(c) Indebtedness of the Borrower pursuant to the New Senior Subordinated Notes issued after the Closing Date in an aggregate amount, together with the Indebtedness permitted under Section 6.01(b) not to exceed \$200,000,000 at any one time outstanding;

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(d) Indebtedness actually outstanding on the Closing Date and listed on Schedule 6.01, but not any refinancings or renewals thereof; provided that Capital Lease Obligations assumed in connection with the Acquisition and set forth on Schedule 6.01 may be refinanced or renewed so long as (i) such refinanced Capital Lease Obligations are in an aggregate principal amount not greater than the aggregate principal amount of the Capital Lease Obligations being renewed or refinanced, plus the amount of any premiums required to be paid thereon and fees and expenses associated therewith, (ii) such refinanced Capital Lease Obligations have a later or equal final maturity and longer or equal weighted average life than the Capital Lease Obligations being renewed or refinanced and (iii) the covenants, events of default and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, no less favorable to the Lenders than those contained in the Capital Lease Obligations being renewed or refinanced;

(e) Indebtedness under Interest Rate Protection Agreements entered into in compliance with Section 5.12, and such other non-speculative Interest Rate Protection Agreements which may be entered into from time to time by the Borrower and which the Borrower in good faith believes will provide protection against fluctuations in interest rates with respect to floating rate Indebtedness then outstanding, and permitted to remain outstanding, pursuant to the other provisions of this Section 6.01;

(f) Indebtedness evidenced by Capital Lease Obligations to the extent permitted pursuant to Section 6.08; provided that in no event shall the aggregate principal amount of Capital Lease Obligations permitted by this paragraph (e) exceed \$5,000,000 at any time outstanding;

(g) intercompany Indebtedness of the Borrower and its Subsidiaries outstanding to the extent permitted by Section 6.04(f);

(h) in addition to any Indebtedness permitted by the preceding paragraph (g), Indebtedness of any Wholly Owned Subsidiary to the Borrower or another Wholly Owned Subsidiary constituting the purchase price in respect of intercompany transfers of goods and services made in the ordinary course of business to the extent not constituting Indebtedness for borrowed money;

(i) Indebtedness under performance bonds, letter of credit obligations to provide security for worker's compensation claims and bank overdrafts, in each case incurred in the ordinary course of business; provided that any obligations arising in connection with such bank overdraft Indebtedness is extinguished within five Business Days;

(j) Indebtedness evidenced by Other Hedging Agreements entered into pursuant to Section 6.04(e);

(k) subject to Section 6.01(m) below, Indebtedness incurred by Foreign Subsidiaries incurred from time to time after the Closing Date so long as the aggregate principal amount of all Indebtedness (including trade letters of credit) incurred pursuant to this paragraph (k) at any time outstanding does not exceed the Dollar Equivalent of \$20,000,000; provided, none of the Indebtedness permitted pursuant to this paragraph (k) may be directly or indirectly guaranteed by the Borrower or any Domestic Subsidiaries of the Borrower;

(l) Indebtedness evidenced by an Accounts Receivable Facility not to exceed \$75.0 million in the aggregate outstanding at any time; provided, no such Indebtedness shall be incurred at a time

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when, on a pro forma basis for any such incurrence, the Senior Leverage Ratio is greater than 2.0:1.0; and

(m) additional Indebtedness of the Borrower and its Subsidiaries to the extent not permitted by the foregoing clauses of this Section 6.01 not to exceed \$10.0 million in aggregate principal amount at any time outstanding; provided, the aggregate amount of Indebtedness under Sections 6.01(k) and (m) does not exceed \$25.0 million at any one time.

SECTION 6.02. Liens. (i) Create, incur, assume or permit to exist, directly or indirectly, any Lien upon or with respect to any Collateral except for Prior Liens and other Liens expressly permitted by the terms of the applicable Security Documents and (ii) create, incur, assume or permit to exist any Lien on any Property that does not constitute Collateral now owned or hereafter acquired by it or on any income or revenues or rights in respect of

any thereof, except:

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or Liens for taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP in the United States (or the equivalent thereof in any country in which a Foreign Subsidiary is doing business, as applicable);

(b) Liens in respect of property or assets of the Borrower or any of the Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlord's and mechanics' liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property or assets of the Borrower and the Subsidiaries, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Borrower and the Subsidiaries, taken as a whole, or (ii) which are being contested in good faith by appropriate proceedings, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien;

(c) Liens in existence on the Closing Date and set forth on Schedule 6.02 (including Liens set out on any applicable title insurance policy on the Closing Date); provided that (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase and (ii) such Liens do not encumber any additional assets or properties of the Borrower or any of the Subsidiaries;

(d) Liens created pursuant to the Security Documents;

(e) Liens placed upon assets used in the ordinary course of business of the Borrower or any of its Subsidiaries at the time of acquisition thereof by the Borrower or any such Subsidiary or within 90 days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase price thereof or Liens upon assets of the Borrower and its Subsidiaries subject to Capital Lease Obligations to the extent permitted by Section 6.01; provided that (i) such Liens only serve to secure the payment of Indebtedness arising under such Capital Lease Obligation and (ii) the Lien encumbering the asset giving rise to the Capital Lease Obligation does not encumber any other asset (other than proceeds thereof) of the Borrower or any Subsidiary of the Borrower; provided that (i) the aggregate outstanding principal amount of all Indebtedness secured by Liens permitted by this paragraph (e) shall not at any time exceed \$5,000,000 and (ii) in all events, the Lien encumbering the assets so acquired does not encumber any other asset (other than proceeds thereof) of the Borrower or such Subsidiary;

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(f) easements, rights-of-way, restrictions (including zoning restrictions), covenants encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies, in each case whether now or hereafter in existence, not securing Indebtedness and not materially interfering with the conduct of the business of the Borrower and the Subsidiaries taken as a whole or the Borrower;

(g) Liens arising out of judgments or awards not giving rise to an Event of Default in respect of which the Borrower or any of its Subsidiaries shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(h) Liens (other than any Lien imposed by ERISA) (i) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, (ii) to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (iii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; provided that the aggregate amount of deposits at any time pursuant to clause (ii) and clause (iii) shall not exceed \$1,000,000 in the aggregate;

(i) any interest or title of a lessor, sublessor, licensee or licensor under any lease or license agreement permitted by this Agreement, including any Lien filed to prevent the impairment of any such interest;

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods;

(k) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower or any of its Subsidiaries in the ordinary course of business in accordance with the past practices of the Borrower and its Subsidiaries;

(l) Liens on assets of Foreign Subsidiaries; provided that (i) such Liens do not extend to, or encumber, assets which constitute Collateral or the capital stock of the Borrower or any of its Subsidiaries, (ii) such Liens extending to the assets of any Foreign Subsidiary secure only Indebtedness incurred by such Foreign Subsidiary pursuant to Section 6.01(k); and

(m) Liens not otherwise permitted by the foregoing paragraphs (a) through (l) to the extent attaching to properties and assets with an aggregate fair value not in excess of, and securing liabilities not in excess of, \$5,000,000 in the aggregate at any time outstanding.

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred unless (i) the sale of such property is permitted by Section 6.05 and (ii) any Liens arising in connection with its use of such property are permitted by Section 6.02(e).

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SECTION 6.04. Investments, Loans and Advances. Directly or indirectly, lend money or credit or make advances to any person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, except that the following shall be permitted:

(a) the Borrower and its Subsidiaries may acquire and hold accounts receivables owing to any of them;

(b) the Borrower and its Subsidiaries may make loans and advances or guarantees of loans or advances in the ordinary course of business to their respective employees so long as the aggregate principal amount thereof at any time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) shall not exceed \$6,000,000;

(c) the Borrower may enter into Interest Rate Protection Agreements to the extent permitted in Section 6.01(e);

(d) the Borrower and the Subsidiaries may consummate the Transactions;

(e) the Borrower may enter into and perform its obligations under Other Hedging Agreements entered into in the ordinary course of business and so long as any such Other Hedging Agreement is not speculative in nature and is (i) related to income derived from foreign operations of the Borrower or any Subsidiary or otherwise related to purchases permitted hereunder from foreign suppliers or (ii) entered into to protect the Borrower and/or its Subsidiaries against fluctuations in the prices of raw materials used in their businesses;

(f) any Wholly Owned Subsidiary may make intercompany loans to the Borrower or any Wholly Owned Subsidiary and the Borrower may make intercompany loans and advances to any Wholly Owned Subsidiary; provided that any promissory notes evidencing such intercompany loans shall be pledged (and delivered) by the Borrower or the respective Domestic Wholly Owned Subsidiary that is the lender of such intercompany loan as Collateral pursuant to the Pledge Agreement, provided further that (i) neither the Borrower nor any Domestic Subsidiaries of the Borrower may make loans to any Foreign Subsidiaries of the Borrower pursuant to this paragraph (f) and (ii) any loans made by any Foreign Subsidiaries to the Borrower or any of its Domestic Subsidiaries pursuant to this paragraph (f) shall be subordinated to the obligations of the Loan Parties pursuant to subordination provisions reasonably acceptable to the Agent;

(g) the Borrower and its Subsidiaries may sell or transfer amounts to the extent permitted by Section 6.05;

(h) the Borrower may establish Subsidiaries to the extent permitted by Section 6.15;

(i) the Borrower and its Domestic Wholly Owned Subsidiaries may make loans and advances to, or other investments in, Foreign Subsidiaries of the Borrower so long as the aggregate amount of any loans, advances or other investments made after the Closing Date at any time outstanding (determined without regard to any write-downs or write-offs thereof) pursuant to this

paragraph (i) shall not exceed \$30,000,000; and

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(j) in addition to investments permitted by clauses (a) through (i) above, the Borrower and its Subsidiaries may make any acquisition of assets relating to, or equity interests in a person engaged in, a business that complies with Section 6.16; provided, (i) no single acquisition is for cash consideration exceeding \$25.0 million, (ii) the aggregate amount of the cash consideration for all such acquisitions does not exceed \$50.0 million in any fiscal year and (iii) the aggregate amount of consideration for all such acquisitions does not exceed \$150.0 million at any time after the Closing Date (of which no more than \$100.0 million may be in cash); provided, however, that with respect to any such acquisition the Borrower, on a pro forma basis for such acquisition, would have (I) a Senior Leverage Ratio less than 2.5:1.00 and (II) a Leverage Ratio, the numerator of which is at least .25 less than the maximum then allowable under Section 6.11 (any such acquisition pursuant to this Section 6.04(j), a "Permitted Acquisition").

SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of (or agree to do any of the foregoing at any future time) all or any part of its Property, or purchase or otherwise acquire (in one or a series of related transactions) any part of the Property (other than purchases or other acquisitions of inventory, materials, equipment and intangible assets in the ordinary course of business) of any person (or agree to do any of the foregoing at any future time), except that:

(a) Capital Expenditures by the Borrower and its Subsidiaries shall be permitted to the extent not in violation of Section 6.08;

(b) each of the Borrower and its Subsidiaries may (i) in the ordinary course of business, sell, lease or otherwise dispose of any assets which, in the reasonable judgment of such person, are obsolete, worn out or otherwise no longer useful in the conduct of such person's business, and (ii) unless an Event of Default shall have occurred and be continuing, subject to Section 2.13(b), sell, lease or otherwise dispose of any assets, provided that the aggregate consideration received in respect of all assets subject to sales or other dispositions pursuant to this clause (b) (ii) shall not exceed \$10,000,000 in any four fiscal quarters of the Borrower;

(c) investments may be made to the extent permitted by Section 6.04;

(d) each of the Borrower and its Subsidiaries may lease (as lessee) real or personal Property in the ordinary course of business (so long as any such lease does not create a Capital Lease Obligation except to the extent permitted by Section 6.01);

(e) each of the Borrower and its Subsidiaries may make sales or transfers of inventory in the ordinary course of business and consistent with past practices (including without limitation sales or transfers of inventory by the Borrower to its Subsidiaries);

(f) the Borrower and its Subsidiaries may sell or discount, in each case without recourse and in the ordinary course of business, overdue accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof consistent with customary industry practice (and not as part of any bulk sale);

(g) licenses, cross-licenses or sublicenses by the Borrower and its Subsidiaries of software, trademarks and other intellectual property in the ordinary course of business and which do not

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materially interfere with the business of the Borrower and the Subsidiaries, taken as a whole, or the Borrower shall be permitted;

(h) the Accounts Receivable Facility, Spin-Off and Divestitures shall be permitted; and

(i) the Borrower or any Domestic Wholly Owned Subsidiary of the Borrower may transfer Property or lease to or acquire or lease Property from the Borrower or any other Domestic Wholly Owned Subsidiary or any Domestic Wholly Owned Subsidiary may be merged into the Borrower (as long as the Borrower is the surviving corporation of such merger as a Wholly Owned Subsidiary of) or any other Domestic Wholly Owned Subsidiary of the Borrower; provided, however, that the Lien on and security interest in such Property granted in favor of the Collateral Agent under the Security Documents shall be maintained in accordance with the provisions of Section 5.11.

To the extent the Required Lenders waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to the Borrower or a Subsidiary) shall be sold free and clear of the Liens created by the Security Documents, and the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 6.06. Dividends. Authorize, declare or pay any Dividends with respect to the Borrower or any of its Subsidiaries, except that:

(a) any Subsidiary of the Borrower (i) may pay cash Dividends to the Borrower or any Wholly Owned Subsidiary of the Borrower and (ii) if such Subsidiary is not a Wholly Owned Subsidiary, may pay cash Dividends to its shareholders generally so long as the Borrower or its respective Subsidiary which owns the equity interest or interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holdings of equity interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of equity interests in such Subsidiary);

(b) so long as there shall exist no Default or Event of Default (both before and after giving effect to the payment thereof), the Borrower may repurchase outstanding shares of its common stock (or options to purchase such common stock) following the death, disability, retirement or termination of employment of employees, officers or directors of the Borrower or any of its Subsidiaries; provided that (i) all amounts used to effect such repurchases are obtained by the Borrower from a substantially concurrent issuance of its common stock (or options to purchase such common stock) to other employees, members of management, executive officers or directors of the Borrower or any of its Subsidiaries or (ii) to the extent the proceeds used to effect any repurchase pursuant to this clause (ii) are not obtained as described in preceding clause (i), the aggregate amount of Dividends paid by the Borrower pursuant to this paragraph (b) (exclusive of amounts paid as described pursuant to preceding clause (i)) shall not exceed \$1,000,000 in any fiscal year of the Borrower; provided that, in the event that the maximum amount which is permitted to be expended in respect of Dividends during any fiscal year pursuant to this clause (b) (ii) is not fully expended during such fiscal year, the maximum amount which may be expended during the immediately succeeding fiscal year pursuant to this clause (b) (ii) shall be increased by such unutilized amount; and

(c) the Borrower may consummate the Spin-Off.

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SECTION 6.07. Transactions with Affiliates. Enter into any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of the Borrower or any of the Subsidiaries, other than in the ordinary course of business and on terms and conditions substantially as favorable to the Borrower or such Subsidiary as would reasonably be obtained by the Borrower or such Subsidiary at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that:

(a) Dividends may be paid to the extent provided in Section 6.06;

(b) loans may be made and other transactions may be entered into between and among the Borrower, the Subsidiaries and their respective Affiliates to the extent permitted by Sections 6.01 and 6.04;

(c) customary fees may be paid to non-officer directors of the Borrower; and

(d) the Spin-Off may be effected and the transition services as set forth on Schedule 6.07.

SECTION 6.08. Capital Expenditures. (a) Make any Capital Expenditures, except in the amount specified during the fiscal year set forth below:

Fiscal Year	Maximum Capital Expenditure
-----	-----
2001	\$13.5
2002	\$14.2
2003	\$15.1
2004	\$16.0
2005	\$16.7
2006	\$17.3
2007	\$17.9
2008	\$18.6

(b) Notwithstanding anything to the contrary contained in paragraph (a) above, to the extent that the aggregate amount of Capital Expenditures made by

the Borrower and its Subsidiaries pursuant to Section 6.08(a) in any fiscal year of the Borrower is less than the amount permitted by Section 6.08(a) with respect to such fiscal year, the amount of such difference, but in no case more than 25% of the amount permitted for such fiscal year, may be carried forward and used to make Capital Expenditures in the immediately succeeding fiscal year (after the full amount of Capital Expenditures otherwise permitted to be made under Section 6.08(a) in such fiscal year, without regard to the provisions of this paragraph (b), have been made); provided that amounts once carried forward to such succeeding fiscal year shall lapse and terminate at the end of such fiscal year.

(c) In addition to the Capital Expenditures permitted pursuant to preceding paragraphs (a) and (b), the Borrower and its Subsidiaries may make additional Capital Expenditures consisting of the reinvestment of proceeds of Net Insurance Proceeds or Net Condemnation Awards not required to be applied to prepay the Loans pursuant to Section 2.13(f); provided, however, that the Property acquired in connection with such reinvestment shall be made subject to the Lien of the Security Documents pursuant to the provisions of Section 5.11.

SECTION 6.09. Consolidated Interest Coverage Ratio . Permit the Consolidated Interest Coverage Ratio for any period comprised of one or more fiscal quarters from the Closing Date to May 31, 2001, and

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thereafter for any period of four consecutive fiscal quarters, in each case taken as one accounting period, ended on the last day of a fiscal quarter described below to be less than the amount set forth opposite such period below:

Period	Ratio
-----	-----
Closing Date to 11/30/2000	1.75:1.00
12/01/2000 to 2/28/2001	1.75:1.00
3/01/2001 to 5/31/2001	1.75:1.00
6/01/2001 to 8/31/2001	1.75:1.00
9/01/2001 to 11/30/2001	1.75:1.00
12/01/2001 to 2/28/2002	2.00:1.00
3/01/2002 to 5/31/2002	2.00:1.00
6/01/2002 to 8/31/2002	2.00:1.00
9/01/2002 to 11/30/2002	2.00:1.00
12/01/2002 to 2/28/2003	2.25:1.00
3/01/2003 to 5/31/2003	2.25:1.00
6/01/2003 to 8/31/2003	2.25:1.00
9/01/2003 to 11/30/2003	2.25:1.00
12/01/2003 to 2/29/2004	2.50:1.00
3/01/2004 to 5/31/2004	2.50:1.00
6/01/2004 to 8/31/2004	2.50:1.00
9/01/2004 to 11/30/2004	2.50:1.00
12/01/2004 to 2/28/2005	2.75:1.00
3/01/2005 to 5/31/2005	2.75:1.00
6/01/2005 to 8/31/2005	3.00:1.00
9/01/2005 to 11/30/2005	3.00:1.00
12/01/2005 to 2/28/2006	3.00:1.00
3/01/2006 to 5/31/2006	3.00:1.00
6/01/2006 to 8/31/2006	3.00:1.00
thereafter	3.50:1.00

SECTION 6.10. Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio for any period comprised of one or more fiscal quarters from the Closing Date to May 31, 2001, and thereafter for any period of four consecutive fiscal quarters, in each case taken as one accounting period, ended on the last day of any period set forth below to be less than the amount set forth opposite such period below:

Period	Ratio
-----	-----
Closing Date to 11/30/2000	1.00:1.00
12/01/2000 to 2/28/2001	1.00:1.00
3/01/2001 to 5/31/2001	1.05:1.00
6/01/2001 to 8/31/2001	1.05:1.00
9/01/2001 to 11/30/2001	1.05:1.00
12/01/2001 to 2/28/2002	1.05:1.00
3/01/2002 to 5/31/2002	1.05:1.00
6/01/2002 to 8/31/2002	1.05:1.00
9/01/2002 to 11/30/2002	1.05:1.00
12/01/2002 to 2/28/2003	1.05:1.00
3/01/2003 to 5/31/2003	1.05:1.00
6/01/2003 to 8/31/2003	1.05:1.00
9/01/2003 to 11/30/2003	1.05:1.00

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Period	Ratio
-----	-----
12/01/2002 to 2/28/2003	1.05:1.00

3/01/2003 to 5/31/2003	1.05:1.00
6/01/2003 to 8/31/2003	1.05:1.00
9/01/2003 to 11/30/2003	1.05:1.00
12/01/2003 to 2/29/2004	1.05:1.00
3/01/2004 to 5/31/2004	1.05:1.00
6/01/2004 to 8/31/2004	1.05:1.00
thereafter	1.10:1.00

SECTION 6.11. Maximum Leverage Ratio . Permit the Leverage Ratio at any time during a period set forth below to be greater than the ratio set forth opposite such period below:

Period	Ratio
-----	-----
Closing Date to 11/30/2000	4.50:1.00
12/01/2000 to 2/28/2001	4.50:1.00
3/01/2001 to 5/31/2001	4.50:1.00
6/01/2001 to 8/31/2001	4.50:1.00
9/01/2001 to 11/30/2001	4.50:1.00
12/01/2001 to 2/28/2002	4.25:1.00
3/01/2002 to 5/31/2002	4.25:1.00
6/01/2002 to 8/31/2002	4.00:1.00
9/01/2002 to 11/30/2002	4.00:1.00
12/01/2002 to 2/28/2003	4.00:1.00
3/01/2003 to 5/31/2003	3.75:1.00
6/01/2003 to 8/31/2003	3.75:1.00
9/01/2003 to 11/30/2003	3.75:1.00
12/01/2003 to 2/29/2004	3.25:1.00
3/01/2004 to 5/31/2004	3.25:1.00
6/01/2004 to 8/31/2004	3:25:1.00
9/01/2004 to 11/30/2004	3.00:1.00
12/01/2004 to 2/28/2005	3.00:1.00
3/01/2005 to 5/31/2005	3.00:1.00
6/01/2005 to 8/31/2005	3.00:1.00
9/01/2005 to 11/30/2005	2.50:1.00
thereafter	2.50:1.00

SECTION 6.12. Limitation on Modifications of Indebtedness; Modifications of Certificate of Incorporation, By-laws and Certain Other Agreements, etc. (i) Amend, waive or modify, or permit the amendment or modification of, any provision of existing Indebtedness or of any agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating thereto other than any amendments or modifications to Indebtedness which do not in any way materially adversely affect the interests of the Lenders and are otherwise permitted under Section 6.01(c), (ii) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or

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redemption as a result of any asset sale, change of control, excess cash flow, proceeds from any Accounts Receivable Facility or similar event of, any Indebtedness (other than the Loans), including the New Senior Subordinated Notes, (iii) amend or modify, or permit the amendment or modification of, any Transaction Document or any of the agreements entered into in connection therewith or any tax sharing agreement, in each case except for amendments or modifications which are not in any way adverse in any material respect to the interests of the Lenders, or (iv) amend, modify or change its Certificate of Incorporation (including, without limitation, by the filing or modification of any certificate of designation) or By-laws, or any agreement entered into by it, with respect to its capital stock (including any shareholders' agreement), or enter into any new agreement with respect to its capital stock, other than any amendments, modifications or changes pursuant to this clause (iv) or any such new agreements pursuant to this clause (iv) which do not in any way materially adversely affect in any material respect the interests of the Lenders.

SECTION 6.13. Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Borrower or any Subsidiary of the Borrower, or pay any Indebtedness owed to the Borrower or a Subsidiary of the Borrower, (b) make loans or advances to the Borrower or any of the Borrower's Subsidiaries or (c) transfer any of its properties or assets to the Borrower or any of the Borrower's Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) the New Senior Subordinated Note Documents, (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or a Subsidiary of the Borrower, (v) customary provisions restricting assignment of any agreement entered into by the Borrower or a Subsidiary of the Borrower in the ordinary course of business, (vi) any holder of a Lien permitted by Section 6.02 may restrict the transfer of the asset or assets subject thereto and (vii)

restrictions which are not more restrictive than those contained in this Agreement contained in any documents governing any Indebtedness incurred after the Closing Date in accordance with the provisions of this Agreement.

SECTION 6.14. Limitation on Issuance of Capital Stock. The Borrower will not permit any of the Subsidiaries to issue any capital stock (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, capital stock, except (i) for transfers and replacements of then outstanding shares of capital stock, (ii) for stock splits, stock dividends and additional issuances which do not decrease the percentage ownership of the Borrower or any of the Subsidiaries in any class of the capital stock of such Subsidiary, (iii) in the case of Foreign Subsidiaries of the Borrower, to qualify directors to the extent required by applicable law, and (iv) Subsidiaries of the Borrower formed after the Closing Date pursuant to Section 6.15 may issue capital stock to the Borrower or the respective Subsidiary of the Borrower which is to own such stock. All capital stock issued in accordance with this Section 6.14 shall, to the extent required by the Pledge Agreement, be delivered to the Collateral Agent for pledge pursuant to the Security Agreement.

SECTION 6.15. Limitation on Creation of Subsidiaries. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders; provided that the Borrower may establish or create one or more Wholly Owned Subsidiaries of the Borrower without such consent so long as (a) 100% of the capital stock of any new Domestic Subsidiary (or all capital stock of any new Foreign Subsidiary which is owned by any Loan Party, except that not more than 65% of the voting stock of any such Foreign Subsidiary shall be required to be so pledged) is upon the creation or establishment of any such new Subsidiary pledged and delivered to the Collateral Agent for the benefit of the Secured Parties under the Security Agreement and (b) upon the creation or establishment of any such new Domestic Subsidiary such Domestic Subsidiary becomes a party to the applicable Security Documents in accordance with Section 5.11 and the other Loan Documents.

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SECTION 6.16. Business. Engage (directly or indirectly) in any business other than the business in which the Borrower and the Subsidiaries are engaged on the Closing Date and other business reasonably related thereto.

SECTION 6.17. Designated Senior Indebtedness. Designate any indebtedness as "Designated Senior Indebtedness" for purposes of the New Senior Subordinated Note Indenture unless the Required Lenders specifically consent thereto in writing.

SECTION 6.18. Fiscal Year. With respect to the Borrower, change its fiscal year-end to a date other than August 31.

ARTICLE VII

Events of Default

In case of the happening of any of the following events ("Events of Default"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or L/C Disbursement or any Fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(d) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a), 5.05, 5.07 or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or

(d) above) and such default shall continue unremedied or shall not be waived for a period of 20 days after written notice thereof from the Administrative Agent or any Lender to the Borrower; provided, however, that

in the case of any such default by the Borrower or any Subsidiary arising out of the occurrence of any default under any Security Document that results in a "Material Adverse Effect" (as defined in the applicable Security Document) caused by the impairment of the value or utility of the Collateral encumbered thereby, such default shall not constitute an Event of De-

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fault hereunder unless such impairment, individually or in the aggregate with all other such impairments, exceeds \$5,000,000;

(f) the Borrower or any Subsidiary shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations) in a principal amount in excess of \$5,000,000, when and as the same shall become due and payable, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Borrower or any Subsidiary, or of a substantial part of the property or assets of the Borrower or a Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of the property or assets of the Borrower or a Subsidiary or (iii) the winding-up or liquidation of the Borrower or any Subsidiary; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of the property or assets of the Borrower or any Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any Subsidiary to enforce any such judgment;

(j) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of the Borrower and its ERISA Affiliates in an aggregate amount exceeding \$1,000,000;

(k) any security interest purported to be created by any Security Document shall cease to be, or shall be asserted by the Borrower or any other Loan Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in the property covered thereby, except to the extent that any such loss of perfection or priority

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results from the failure of the Collateral Agent to renew timely any

applicable UCC financing statement or to maintain possession of certificates representing securities pledged under the Security Agreement and except to the extent that such loss is covered by a lender's title insurance policy and the related insurer promptly after such loss shall have acknowledged in writing that such loss is covered by such title insurance policy;

(l) at any time after the execution and delivery thereof, (i) the Subsidiary Guarantee Agreement for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) any Security Document shall cease to be in full force and effect (other than by reason of a release of Collateral thereunder in accordance with the terms hereof or thereof, the satisfaction in full of the Obligations or any other termination of such Security Document in accordance with the terms hereof or thereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected first priority Lien in any Collateral purported to be covered thereby, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party;

(m) any of the Obligations shall cease to constitute "Senior Indebtedness" under and as defined in the New Senior Subordinated Note Indenture; or

(n) there shall have occurred a Change in Control;

then, and in every such event (other than an event with respect to the Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event with respect to the Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE VIII

The Administrative Agent and the Collateral Agent

In order to expedite the transactions contemplated by this Agreement, Credit Suisse First Boston is hereby appointed to act as Administrative Agent and Collateral Agent on behalf of the Lenders and the Issuing Bank (for purposes of this Article VIII, the Administrative Agent and the Collateral Agent are referred to col-

lectively as the "Agents"). Each of the Lenders and each assignee of any such Lender, hereby irrevocably authorizes the Agents to take such actions on behalf of such Lender or assignee or the Issuing Bank and to exercise such powers as are specifically delegated to the Agents by the terms and provisions hereof and of the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent is hereby expressly authorized by the Lenders and the Issuing Bank, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Bank all payments of principal of and interest on the Loans, all payments in respect of L/C Disbursements and all other amounts due to the Lenders hereunder, and promptly to distribute to each Lender or the Issuing Bank its proper share of each payment so received; (b) to give notice on behalf of each of the Lenders to the Borrower of any Event of Default specified in this Agreement of which the Administrative Agent has actual knowledge acquired in connection with its agency hereunder; and (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by the Borrower or any other Loan Party pursuant to this Agreement or the other Loan Documents as received by the Administrative Agent. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to execute any and all documents (including releases and supplements) with respect to the Collateral and the

rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents.

Neither the Agents nor any of their respective directors, officers, employees or agents shall be liable as such for any action taken or omitted by any of them except for its or his own gross negligence or wilful misconduct, or be responsible for any statement, warranty or representation herein or the contents of any document delivered in connection herewith, or be required to ascertain or to make any inquiry concerning the performance or observance by the Borrower or any other Loan Party of any of the terms, conditions, covenants or agreements contained in any Loan Document. The Agents shall not be responsible to the Lenders for the due execution, genuineness, validity, enforceability or effectiveness of this Agreement or any other Loan Documents, instruments or agreements. The Agents shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. Each Agent shall, in the absence of knowledge to the contrary, be entitled to rely on any instrument or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Neither the Agents nor any of their respective directors, officers, employees or agents shall have any responsibility to the Borrower or any other Loan Party on account of the failure of or delay in performance or breach by any Lender or the Issuing Bank of any of its obligations hereunder or to any Lender or the Issuing Bank on account of the failure of or delay in performance or breach by any other Lender or the Issuing Bank or the Borrower or any other Loan Party of any of their respective obligations hereunder or under any other Loan Document or in connection herewith or therewith. Each of the Agents may execute any and all duties hereunder by or through agents or employees and shall be entitled to rely upon the advice of legal counsel selected by it with respect to all matters arising hereunder and shall not be liable for any action taken or suffered in good faith by it in accordance with the advice of such counsel.

The Lenders hereby acknowledge that neither Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders.

Subject to the appointment and acceptance of a successor Agent as provided below, either Agent may resign at any time upon 30 days prior notice to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent which

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shall be a bank with an office in New York, New York, having a combined capital and surplus of at least \$500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Agent hereunder by a successor bank, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations hereunder. After the Agent's resignation hereunder, the provisions of this Article and Section 9.05 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

With respect to the Loans made by it hereunder, each Agent in its individual capacity and not as Agent shall have the same rights and powers as any other Lender and may exercise the same as though it were not an Agent, and the Agents and their Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not an Agent.

Each Lender agrees (a) to reimburse the Agents, on demand, in the amount of its pro rata share (based on the aggregate amount of its outstanding Term Loans and Revolving Credit Commitment hereunder) of any reasonable expenses incurred for the benefit of the Lenders by the Agents, including reasonable counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, that shall not have been reimbursed by the Borrower and (b) to indemnify and hold harmless each Agent and any of its directors, officers, employees or agents, on demand, in the amount of such pro rata share, from and against any and all liabilities, taxes, obligations, losses, damages, penalties, actions, judgments, suits, costs, and reasonable expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against it in its capacity as Agent or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the Borrower or any other Loan Party, provided that no Lender shall be liable to an Agent or any such other indemnified person for any portion of such liabilities, taxes,

obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Agent or any of its directors, officers, employees or agents. Each Revolving Credit Lender agrees to reimburse the Issuing Bank and its directors, employees and agents, in each case, to the same extent and subject to the same limitations as provided above for the Agents.

Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder. Each of the parties hereto acknowledge and agrees that none of the Syndication Agent or either Documentation Agent shall have any duties, responsibilities, obligations or liabilities, as such, hereunder or under the other Loan Documents.

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ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Borrower, to it at 6100 North Baker Road, Glendale, Wisconsin 53209, Attention of Andy Lampereur (Telecopy No. (414) 247-5550) with a copy to Quarles & Brady, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, Attention of Andrew M. Barnes (Telecopy No. (414) 271-3552);

(b) if to the Administrative Agent, to Credit Suisse First Boston, Eleven Madison Avenue, New York, New York 10010, Attention of Agency Administration (Telecopy No. (212) 325-8304); and

(c) if to a Lender, to it at its address (or telecopy number) set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender shall have become a party hereto.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01.

SECTION 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and the Issuing Bank and shall survive the making by the Lenders of the Loans and the issuance of Letters of Credit by the Issuing Bank, regardless of any investigation made by the Lenders or the Issuing Bank or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. The provisions of Sections 2.14, 2.16, 2.20 and 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank.

SECTION 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

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SECTION 9.04. Successors and Assigns. (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Issuing Bank or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, however, that (i) except in the case of an assignment to a Lender or an Affiliate or Related Fund of a Lender, (x) the Borrower and the Administrative Agent (and, in the case of an assignment of a Revolving Credit Commitment, the Issuing Bank and the Swingline Lender) must give their prior written consent to such assignment (which consent shall not be unreasonably withheld); provided, however, that the consent of the Borrower shall not be required to any such assignment during the continuance of any Default or Event of Default and (y) the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$2,500,000 (or in each case the Alternative Currency Equivalent thereof in the case of an Alternative Currency Loan) (or, if less, the entire remaining amount of such Lender's Commitment) or such lesser amount as the Borrower and the Administrative Agent may from time to time agree (such agreement to be conclusively evidenced by the execution of the related Assignment and Acceptance), (ii) the parties to each such assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together (except in the case of an assignment to an Affiliate or a Related Fund) with a processing and recordation fee of \$3,500; provided that, in the case of contemporaneous

assignments by a Lender to more than one fund managed by the same investment advisor (which funds are not then Lenders hereunder), only a single \$3,500 such fee shall be payable for all such contemporaneous assignments and (iii) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and applicable tax forms. Upon acceptance and recording pursuant to paragraph (e) of this Section 9.04, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.16, 2.20 and 9.05, as well as to any Fees accrued for its account and not yet paid).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Term Loan Commitment and Revolving Credit Commitment, and the outstanding balances of its Term Loans and Revolving Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance, (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Subsidiary or the performance or observance by the Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this

Agreement, together with copies of the most recent financial statements referred to in Section 3.05(a) or delivered pursuant to Section 5.04 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof, together with

such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and the Borrower, the Administrative Agent, the Issuing Bank, the Collateral Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank, the Collateral Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire and appropriate tax forms completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above and, if required, the written consent of the Borrower, the Swingline Lender, the Issuing Bank and the Administrative Agent to such assignment, the Administrative Agent shall (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Lenders, the Swingline Lender and the Issuing Bank. No assignment shall be effective unless it has been recorded in the Register as provided in this paragraph (e).

(f) Each Lender may without the consent of the Borrower, the Swingline Lender, the Issuing Bank or the Administrative Agent sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the benefit of the cost protection provisions contained in Sections 2.14, 2.16 and 2.20 to the same extent as if they were Lenders and (iv) the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans or L/C Disbursements and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal of or the rate at which interest is payable on the Loans, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans, increasing or extending the Commitments or releasing any Subsidiary Guarantor or all or any substantial part of the Collateral).

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(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided that, prior to any such disclosure of information designated by the Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lenders pursuant to Section 9.17.

(h) Any Lender may at any time pledge or assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; provided that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if,

such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefore, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(j) The Borrower shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent, the Issuing Bank and each Lender, and any attempted assignment without such consent shall be null and void.

(k) In the event that Standard & Poor's Ratings Group, Moody's Investors Service, Inc., and Thompson's BankWatch (or Insurance Watch Ratings Service, in the case of Lenders that are insurance companies (or Best's Insurance Reports, if such insurance company is not rated by Insurance Watch Ratings Service)) shall, after the date that any Lender becomes a Revolving Credit Lender, downgrade the long-term certificate deposit ratings of such Lender, and the resulting ratings shall be below BBB-, Baa3 and C (or BB, in the case of a Lender that is an insurance company (or B, in the case of an insurance company not rated by Insurance Watch Ratings Service)), then the Issuing Bank shall have the right, but not the obligation, at its own expense, upon

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notice to such Lender and the Administrative Agent, to replace (or to request the Borrower to use its reasonable efforts to replace) such Lender with an assignee (in accordance with and subject to the restrictions contained in paragraph (b) above), and such Lender hereby agrees to transfer and assign without recourse (in accordance with and subject to the restrictions contained in paragraph (b) above) all its interests, rights and obligations in respect of its Revolving Credit Commitment to such assignee; provided, however, that (i) no such assignment shall conflict with any law, rule and regulation or order of any Governmental Authority and (ii) the Issuing Bank or such assignee, as the case may be, shall pay to such Lender in immediately available funds on the date of such assignment the principal of and interest accrued to the date of payment on the Loans made by such Lender hereunder and all other amounts accrued for such Lender's account or owed to it hereunder.

SECTION 9.05. Expenses; Indemnity. (a) The Borrower agrees to pay all out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, the Swingline Lender and the Issuing Bank in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Administrative Agent, the Collateral Agent or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the reasonable fees, charges and disbursements of Cahill Gordon & Reindel, counsel for the Administrative Agent and the Collateral Agent, and, in connection with any such enforcement or protection, the reasonable fees, charges and disbursements of any other counsel for the Administrative Agent, the Collateral Agent or any Lender.

(b) The Borrower agrees to indemnify the Administrative Agent, the Collateral Agent, each Lender and the Issuing Bank, each Affiliate of any of the foregoing persons and each of their respective directors, officers, trustees, employees and agents (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the Loans or issuance of Letters of Credit, (iii) any claim, litigation, investigation or proceeding

relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or Release of Hazardous Materials on any property owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Claim related in any way to the Borrower or the Subsidiaries; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or wilful misconduct of such Indemnitee.

(c) The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank. All amounts due under this Section 9.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

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SECTION 9.06. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement and other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured. Each Lender is authorized to convert any such amounts of deposits or indebtedness into a currency other than the one in which it is otherwise denominated in order to effect the setoff of a given deposit or other indebtedness in one currency against an obligation of the Borrower in another currency. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 (THE "UNIFORM CUSTOMS") AND, AS TO MATTERS NOT GOVERNED BY THE UNIFORM CUSTOMS, THE LAWS OF THE STATE OF NEW YORK.

SECTION 9.08. Waivers; Amendment. (a) No failure or delay of the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders; provided, however, that no such agreement shall (i) change any scheduled principal payment date or amount or date for the payment of any interest on any Loan or any date for reimbursement of an L/C Disbursement, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan or L/C Disbursement, without the prior written consent of each Lender affected thereby, (ii) change or extend the Commitment or decrease or extend the date for payment of the Fees of any Lender or any other amounts payable hereunder to any Lender without the prior written consent of such Lender, (iii) amend or modify the pro rata requirements of Section 2.17, the provisions of Section 9.04(j), the provisions of this Section 9.08, the definition of the term "Required Lenders" or release any Subsidiary Guarantor (other than in connection with a transaction permitted hereunder) or all or any substantial part of the Collateral, without the prior written consent

of each Lender, (iv) change the provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Tranche A Term Loans, Tranche B Term Loans, Tranche C

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Term Loans, if any, or Revolving Loans (as used in this Section, each a "Class" of Loans) differently from the rights in respect of payments due to Lenders holding any other Class of Loans without the prior written consent of Lenders holding a majority of the aggregate outstanding principal amount of the Loans (or, if no Revolving Loans are outstanding, the Revolving Commitments) of the adversely affected Class of Loans, (v) change the rights of the Lenders holding Tranche B Term Loans to reject prepayments under Section 2.12(b) and Section 2.13(j) without the prior written consent of the Lenders holding a majority of the aggregate outstanding principal amount of the Tranche B Term Loans or (vi) amend or modify the protections afforded to an SPC pursuant to the provisions of Section 9.04(i) without the written consent of such SPC; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender hereunder or under any other Loan Document without the prior written consent of the Administrative Agent, the Collateral Agent, the Issuing Bank or the Swingline Lender, respectively.

Notwithstanding the foregoing, any technical amendments or modifications to this Agreement required to give effect to the issuance of the Tranche C Term Loan Commitment or the Tranche C Term Loans in accordance with Section 2.25 shall only require the consent of the Administrative Agent, the Tranche C Term Loan Lenders and the Borrower.

SECTION 9.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any L/C Disbursement, together with all fees, charges and other amounts which are treated as interest on such Loan or participation in such L/C Disbursement under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.10. Entire Agreement. This Agreement, the Fee Letter and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

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SECTION 9.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. Jurisdiction; Consent to Service of Process. (a) Each of the Borrower, the Administrative Agent, the Collateral Agent, the Issuing Bank and each Lender hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any other party or its properties in the courts of any jurisdiction.

(b) Each of the Borrower, the Administrative Agent, the Issuing Bank and the Lenders hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.16. Judgment Currency. (a) If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in one currency into another currency, the parties hereto agree, to the fullest extent that they may lawfully do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other cur-

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rency in the city in which it normally conducts its foreign exchange operation for the first currency on the Business Day preceding the day on which final judgment is given.

(b) The obligation of each Borrower in respect of any sum due from it to any Lender hereunder shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by such Lender of any sum adjudged to be so due in the Judgment Currency such Lender may in accordance with the normal banking procedures purchase the Agreement Currency with the Judgment Currency; if the amount of Agreement Currency so purchased is less than the sum originally due to such Lender in the Agreement Currency, such Borrower agrees notwithstanding any such judgment to indemnify such Lender against such loss, and if the amount of the Agreement Currency so purchased exceeds the sum originally due to any Lender, such Lender agrees to remit to such Borrower such excess.

(c) For purposes of determining the rate of exchange for this Section, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 9.17. Confidentiality. The Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders agrees to keep confidential (and to use its best efforts to cause its respective agents and representatives to keep confidential) the Information (as defined below) and all copies thereof, extracts therefrom and analyses or other materials based thereon, except that the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender

shall be permitted to disclose Information (a) to such of its respective officers, directors, employees, agents, affiliates and representatives as need to know such Information, (b) to a potential assignee or participant of such Lender or any direct or indirect contractual counterparty in any swap agreement relating to the Loans or such potential assignee's or participant's or counterparty's advisors who need to know such Information (provided that any such potential assignee or participant or counterparty shall, and shall use its best efforts to cause its advisors to, keep confidential all such information on the terms set forth in this Section 9.17, (c) to the extent requested by any examiner or regulatory authority, (d) to the extent otherwise required by applicable laws and regulations or by any subpoena or similar legal process, (e) in connection with any suit, action or proceeding relating to the enforcement of its rights hereunder or under the other Loan Documents or (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.17 or (ii) becomes available to the Administrative Agent, the Issuing Bank, any Lender or the Collateral Agent on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" shall mean all financial statements, certificates, reports, agreements and information (including all analyses, compilations and studies prepared by the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender based on any of the foregoing) that are received from the Borrower and related to the Borrower, any shareholder of the Borrower or any employee, customer or supplier of the Borrower, other than any of the foregoing that were available to the Administrative Agent, the Collateral Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to its disclosure thereto by the Borrower, and which are in the case of Information provided after the date hereof, clearly identified at the time of delivery as confidential. The provisions of this Section 9.17 shall remain operative and in full force and effect regardless of the expiration and term of this Agreement.

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

APPLIED POWER, INC.,
(doing business as Actuant Corporation)

by /s/

Name:
Title:

CREDIT SUISSE FIRST BOSTON, individually, and
as Administrative Agent, Collateral Agent,
Swingline Lender and an Issuing Bank,

by /s/

Name:
Title:

by /s/

Name:
Title:

FIRST UNION NATIONAL BANK, individually, and
as Syndication Agent,

by /s/

Name:
Title:

ING (U.S.) CAPITAL LLC, individually, and as
Documentation Agent,

by /s/

Name:
Title:

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TERM LOAN AND REVOLVING CREDIT

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY

AGREEMENT AND FIXTURE FILING

TERM LOAN AND REVOLVING CREDIT MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), dated as of July

31, 2000, made by APW Tools & Supplies, Inc., a Wisconsin corporation having an office at 6101 North Baker Road, Glendale, WI, as mortgagor, assignor and debtor (in such capacities and together with any successors in such capacities, the "Mortgagor"), in favor of CREDIT SUISSE FIRST BOSTON, a bank organized under the

laws of Switzerland, acting through its New York branch ("CSFB"), having an office at Eleven Madison Avenue, New York, New York 10010, in its capacity as collateral agent for the lending institutions (the "Lenders") from time to time

party to the Credit Agreement (as hereinafter defined), as mortgagee, assignee and secured party (CSFB, in such capacities and together with any successors in such capacities, the "Mortgagee").

R E C I T A L S :

A. Pursuant to that certain credit agreement, dated as of July 31, 2000 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Applied Power Inc. (doing business

as Actuant Corporation), a Wisconsin corporation (the "Borrower"), the Lenders,

CSFB, as swingline lender, an issuing bank, administrative agent and Collateral Agent, First Union National Bank, as syndication agent and ING (U.S.) Capital LLC, as documentation agent, the Lenders have agreed to make to or for the account of the Borrower certain Loans (as hereinafter defined) and to issue certain Letters of Credit (as hereinafter defined) for the account of the Borrower.

B. It is contemplated that the Borrower and one or more of the Subsidiary Guarantors may enter into one or more agreements (collectively, the "Interest Rate Protection Agreements") with one or more of the Lenders or their

respective Affiliates (as hereinafter defined) fixing the interest rates with respect to the Loans under the Credit Agreement.

C. The Borrower owns, directly or through its Subsidiaries (as hereinafter defined), all of the issued and outstanding shares of the Mortgagor.

D. The Mortgagor has, pursuant to a certain subsidiary guarantee agreement, dated as of July 31, 2000, among other things, guaranteed (the "Subsidiary Guarantee") the obligations of the Borrower under the Credit

Agreement and the other Loan Documents (as hereinafter defined).

E. The Mortgagor will receive substantial benefits from the execution, delivery and performance of the Loan Documents and is, therefore, willing to enter into this Mortgage.

F. The Mortgagor is or will be the legal owner of the Mortgaged Property (as hereinafter defined).

G. It is a condition to the obligations of the Lenders to make the Loans under the Credit Agreement and a condition to any Lender issuing Letters of Credit under the Credit Agreement or entering

into any Interest Rate Protection Agreement that the Mortgagor execute and deliver the applicable Loan Documents (as hereinafter defined), including this

Mortgage.

H. This Mortgage is given by the Mortgagor in favor of the Mortgagee for its benefit and the benefit of the Lenders (collectively, the "Secured Parties") to secure the payment and performance of all of the Secured Obligations (as hereinafter defined).

A G R E E M E N T:
- - - - -

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby covenants and agrees with the Mortgagee as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. Capitalized terms used but not otherwise

defined herein shall have the meanings assigned to such terms in the Credit Agreement. The following terms used in this Mortgage shall have the following meanings:

"ACM" shall have the meaning assigned to such term in Section 4.8(ii)

hereof.

"Affiliates" shall have the meaning assigned to such term in the

Credit Agreement.

"Allocated Indebtedness" shall have the meaning assigned to such term

in Section 14.20(i) hereof.

"Allocation Notice" shall have the meaning assigned to such term in

Section 14.20(i) hereof.

"Alteration" shall mean any and all additions, modifications or

changes, structural or nonstructural.

"Architect's Certificate" shall have the meaning assigned to such term

in Section 10.4(ii) hereof.

"Borrower" shall have the meaning assigned to such term in Recital A

hereof.

"Business Day" shall have the meaning assigned to such term in the

Credit Agreement.

"Charges" shall mean any and all real estate, property and other

taxes, assessments and special assessments, levies, fees, all water and sewer rents and charges and all other governmental charges imposed upon or assessed against, and all claims (including, without limitation, claims for labor, materials and supplies and other claims arising by operation of law) against, all or any portions of the Mortgaged Property.

"Collateral" shall have the meaning assigned to such term in Section

14.20(i) hereof.

"Collateral Account" shall have the meaning assigned to such term in

the Security Agreement.

"Commitments" shall have the meaning assigned to such term in the

Credit Agreement.

"Contested Liens" shall mean, collectively, any Liens incurred in

respect of any Charges to the extent that the amounts owing in respect thereof
are not yet delinquent or are being contested and otherwise comply with the
provisions of Section 9.1 hereof; provided, however, that such Liens shall in

all respects be subject and subordinate in priority to the Lien and security
interest created and evidenced by this Mortgage, except if and to the extent
that the law or regulation creating, permitting or authorizing such Lien
provides that such Lien must be superior to the Lien and security interest
created and evidenced hereby.

"Contracts" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all contracts and other general
intangibles relating to the Mortgaged Property and all reserves, deferred
payments, deposits, refunds and claims of every kind, nature or character
relating thereto.

"Cost of Construction" shall mean the sum, so far as it relates to the

reconstructing, renewing, restoring or replacing of the Improvements, of (i)
obligations incurred or assumed by the Mortgagor or undertaken by tenants
pursuant to the terms of the Leases for labor, materials and other expenses and
to contractors, builders and materialmen, (ii) the cost of contract bonds and of
insurance of every kind, nature or character that would be deemed by a Prudent
Operator to be necessary or appropriate during the course of construction, (iii)
the expenses incurred or assumed by the Mortgagor for test borings, surveys,
estimates, any Plans and Specifications and preliminary investigations therefor,
and for supervising construction, as well as for the performance of all other
duties required by or reasonably necessary for proper construction, (iv) ad
valorem property taxes levied upon the Premises during performance of any
Restoration and (v) any costs or other charges in connection with obtaining
title insurance and counsel opinions that may be required or necessary in
connection with a Restoration.

"Credit Agreement" shall have the meaning assigned to such term in

Recital A hereof.

"Default Rate" shall mean the rate per annum equal to the highest rate

then payable under the Credit Agreement.

"Destruction" shall mean any and all damage to, or loss or destruction

of, the Premises or any part thereof.

"Environmental Law" shall have the meaning assigned to such term in

the Credit Agreement.

"Estimate" shall have the meaning assigned to such term in Section

10.4(ii)(D) hereof.

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"Event of Default" shall have the meaning assigned to such term in the

Credit Agreement.

"Fixture" shall mean all machinery, apparatus, equipment, fittings,

fixtures, improvements and articles of personal property of every kind,
description and nature whatsoever now or hereafter attached or affixed to the
Land or any other Improvement or used in connection with the use and enjoyment
of the Land or any other Improvement or the maintenance or preservation thereof,
which by the nature of their location thereon or attachment thereto are fixtures
under the UCC or any other applicable law including, without limitation, all
utility systems, fire sprinkler and security systems, drainage facilities,
lighting facilities, all water, sanitary and storm sewer, drainage, electricity,
steam, gas, telephone and other utility equipment and facilities, pipes,
fittings and other items of every kind and description now or hereafter attached
to or located on the Land which by the nature of their location thereon or
attachment thereto are real property under applicable law, HVAC equipment,
boilers, electronic data processing, telecommunications or computer equipment,
refrigeration, electronic monitoring, water or lighting systems, power,
sanitation, waste removal, elevators, maintenance or other systems or equipment.

"Full Replacement Cost" shall mean the Cost of Construction to replace

the Improvements, exclusive of depreciation, excavation, foundation and footings, as determined from time to time (but not less frequently than would be determined by a Prudent Operator or as otherwise requested by the Mortgagee) by a Person selected by the Mortgagor and reasonably acceptable to the Mortgagee.

"GAAP" shall have the meaning assigned to such term in the Credit

Agreement.

"Governmental Authority" shall mean any Federal, state, local, foreign

or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board, bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court, tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Mortgagor or the Mortgaged Property or any portion thereof.

"Hazardous Materials" shall have the meaning assigned to such term in

the Credit Agreement.

"Improvements" shall mean all buildings, structures and other

improvements of every kind or description and any and all Alterations now or hereafter located, attached or erected on the Land including, without limitation (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements immediately upon delivery thereof on the Land and to be part of the improvements immediately upon their incorporation therein.

"Indemnified Liabilities" shall have the meaning assigned to such term

in Section 14.6(i) hereof.

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"Indemnitees" shall have the meaning assigned to such term in Section

14.6(i) hereof.

"Insurance Certificate" shall mean a certificate evidencing the

Insurance Requirements (i) in substantially the form commonly known as "ACORD 27" that (A) provides that the insurance has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the Insurance Policies, (B) provides an unequivocal obligation to give notice in advance to additional interest parties of termination and notification in advance of changes and (C) purports to convey all the privileges of the Insurance Policies to the certificate holders and (ii) that otherwise complies with the requirements with respect thereto set forth in Article VIII hereof.

"Insurance Policies" means the insurance policies and coverages

required to be maintained by the Mortgagor with respect to the Mortgaged Property pursuant to Article VIII hereof and all renewals and extensions

thereof.

"Insurance Requirements" means, collectively, all provisions of the

Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon the Mortgagor and applicable to the Mortgaged Property or any use or condition thereof.

"Interest Rate Protection Agreements" shall have the meaning assigned

to such term in Recital B hereof.

"Land" shall mean the land described in Schedule A annexed to this

Mortgage, together with all of the Mortgagor's reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water

courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto.

"Landlord" shall mean any landlord, lessor, franchisor, licensor or

grantor, as applicable.

"Leases" shall mean, collectively, any and all interests of the

Mortgagor, as Landlord, in all leases and subleases of space, tenancies, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, relating in any manner to the Premises and any and all amendments, modifications, supplements, replacements, extensions and renewals if any thereof, whether now in effect or hereafter coming into effect.

"Lenders" shall have the meaning assigned to such term in the Preamble

hereof.

"Letters of Credit" shall have the meaning assigned to such term in

the Credit Agreement.

"Liability Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (ii) and, to the extent applicable, (vi) and (vii) of Section 8.1 hereof.

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"Lien" shall have the meaning assigned to such term in the Credit

Agreement.

"Loan Documents" shall have the meaning assigned to such term in the

Credit Agreement.

"Loan Parties" shall have the meaning assigned to such term in the

Credit Agreement.

"Loans" shall have the meaning assigned to such term in the Credit

Agreement.

"Material Adverse Effect" shall mean (a) a materially adverse effect

on the business, property, results of operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Mortgagor to perform any of its obligations under this Mortgage or (c) material impairment of the rights of or benefits or remedies available to the Mortgagee under this Mortgage including, without limitation, any material impairment of the value or utility of the Mortgaged Property or the Lien of this Mortgage.

"Mortgage" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgaged Property" shall have the meaning assigned to such term in

Section 2.1 hereof.

"Mortgagee" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor" shall have the meaning assigned to such term in the

Preamble hereof.

"Mortgagor's Interest" shall have the meaning assigned to such term in

Section 2.2 hereof.

"Net Cash Proceeds" shall have the meaning assigned to such term in

the Credit Agreement.

"Net Condemnation Award" shall have the meaning assigned to such term

in Section 10.2 hereof.

"Net Insurance Proceeds" shall have the meaning assigned to such term

in Section 10.1 hereof.

"Officers' Certificate" shall mean, as applied to any corporation, a

certificate executed on behalf of such corporation by its Chairman of the Board
(if an officer) or its Chief Executive Officer or one of its Vice Presidents (or
an equivalent officer) or by its Chief Financial Officer, Vice President-Finance
or its Treasurer (or an equivalent officer) or any Assistant Treasurer in their
official (and not individual) capacities; provided, however, that every

Officers' Certificate with respect to the compliance with a condition precedent
to the making of any Loan or the taking of any other action hereunder shall
include (i) a statement that the officers making or giving such Officers'
Certificate have read such condition and any definitions or other provisions
contained in this Agreement relating thereto, and (ii) a statement as to
whether, in the opinion of the signers, such condition has been complied with.

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"Permit" shall mean any and all permits, certificates, approvals,

authorizations, consents, licenses, variances, franchises or other instruments,
however characterized, of any Governmental Authority (or any Person acting on
behalf of a Governmental Authority) now or hereafter acquired or held, together
with all amendments, modifications, extensions, renewals and replacements of any
thereof issued or in any way furnished in connection with the Mortgaged Property
including, without limitation, building permits, certificates of occupancy,
environmental certificates, industrial permits or licenses and certificates of
operation.

"Permitted Collateral Liens" shall have the meaning assigned to such

term in Section 4.7(v) hereof.

"Permitted Liens" shall have the meaning assigned to such term in the

Credit Agreement.

"Person" shall have the meaning assigned to such term in the Credit

Agreement.

"Plans and Specifications" shall have the meaning assigned to such

term in Section 10.4(i) hereof.

"Premises" shall mean, collectively, the Land and the Improvements.

"Prior Liens" shall mean, collectively, the Liens identified in

Schedule B annexed to this Mortgage.

"Proceeds" shall mean, collectively, any and all (i) proceeds of the

conversion, voluntary or involuntary, of any of the Mortgaged Property or any
portion thereof into cash or liquidated claims, (ii) proceeds of any insurance
(except payments made to a Person which is not a party to this Mortgage),
indemnity, warranty, guaranty or claim payable to the Mortgagee or to the
Mortgagor from time to time with respect to any of the Mortgaged Property
including, without limitation, all Net Insurance Proceeds, (iii) payments (in
any form whatsoever) made or due and payable to the Mortgagor from time to time
in connection with any requisition, confiscation, condemnation, seizure or
forfeiture of all or any portion of the Mortgaged Property by any Governmental
Authority (or any Person acting on behalf of a Governmental Authority)
including, without limitation, all Net Condemnation Awards, (iv) products of the
Mortgaged Property and (v) other amounts from time to time paid or payable under
or in connection with any of the Mortgaged Property including, without
limitation, refunds of real estate taxes and assessments, including interest
thereon.

"Property Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (i), (iii), (iv), (v) and, to the extent applicable, (vii) of Section 8.1 hereof.

"Prudent Operator" shall mean a prudent operator of property similar

in use and configuration to the Premises and located in the locality where the Premises are located.

"Real Property Officers' Certificate" shall mean the Officers'

Certificate delivered pursuant to Section 4.02(h) (12) of the Credit Agreement.

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"Records" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the Mortgaged Property or the construction of any Alteration or the maintenance of any Permit.

"Remedial Action " shall have the meaning assigned to such term in the

Credit Agreement.

"Rental Value" shall mean the sum of (x) the total estimated gross

rental income from tenant occupation of the Improvements as furnished and equipped under Leases and (y) the total amount of all other Charges which are the legal obligation of the Tenants of the Premises under Leases.

"Rents" shall mean, collectively, any and all rents, additional rents,

royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Lease to secure performance of the Tenant's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Mortgagor under any Lease or otherwise, and any award in the event of the bankruptcy of any Tenant under or guarantor of a Lease.

"Requirements of Law" shall mean, collectively, any and all

requirements of any Governmental Authority including, without limitation, any and all orders, decrees, determinations, laws, treaties, ordinances, rules, regulations or similar statutes or case law.

"Restoration" shall have the meaning assigned to such term in Section

10.3 hereof.

"Restoration Commitment" shall have the meaning assigned to such term

in Section 10.4(iii) hereof.

"Restoration Election Notice" shall have the meaning assigned to such

term in Section 10.3 hereof.

"Restoration Letter of Credit" shall have the meaning assigned to such

term in Section 10.4(iii) hereof.

"Secured Obligations" shall mean all obligations (whether or not

constituting future advances, obligatory or otherwise) of the Borrower and any and all of the other Loan Parties from time to time arising under or in respect hereof, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents (including, without limitation, the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Mortgage, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents), in each case whether (i) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due whether at stated maturity, by acceleration or otherwise, (ii) arising in the regular course of

business or otherwise, (iii) for payment or performance and/or (iv) now existing or hereafter arising (including, with-

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out limitation, interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other Person, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding).

"Secured Parties" shall have the meaning assigned to such term in

Recital H hereof.

"Security Agreement" shall have the meaning assigned to such term in

the Credit Agreement.

"Security Documents" shall have the meaning assigned to such term in

the Credit Agreement.

"Subordination Agreement" shall mean a subordination, nondisturbance

and attornment agreement substantially in the form of Exhibit 1 annexed to this Mortgage.

"Subsidiaries" shall have the meaning assigned to such term in the

Credit Agreement.

"Subsidiary Guarantee" shall have the meaning assigned to such term in

Recital D hereof.

"Subsidiary Guarantors" shall have the meaning assigned to such term

in the Credit Agreement.

"Taking" shall mean any taking of the Mortgaged Property or any part

thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part thereof, by any Governmental Authority, civil or military.

"Tax Escrow Fund" shall have the meaning assigned to such term in

Section 7.2 hereof.

"Tenant" shall mean any tenant, lessee, sublessee, franchisee,

licensee, grantee or obligee, as applicable.

"UCC" shall mean the Uniform Commercial Code as in effect on the date

hereof in the jurisdiction in which the Premises are located; provided, however,

that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any item or portion of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the jurisdiction in which the Premises are located, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

SECTION 1.2 Interpretation. In this Mortgage, unless otherwise

specified, (i) singular words include the plural and plural words include the singular, (ii) words importing any gender include the other gender, (iii) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors,

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administrators and personal representatives, (iv) references to any statute or other law include all applicable rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, consolidating or replacing the statute or law referred to, (v) the words "consent," "approve" and "agree,"

and derivations thereof or words of similar import, mean the prior written consent, approval or agreement of the Person in question, (vi) the words "include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation," (vii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import, refer to this Mortgage in its entirety, (viii) references to Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are to the Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses hereof, (ix) the Schedules and Exhibits to this Mortgage, in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, are incorporated herein by reference, (x) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience only and shall not affect the constructions of any provisions hereof and (xi) all obligations of the Mortgagor hereunder shall be satisfied by the Mortgagor at the Mortgagor's sole cost and expense.

SECTION 1.3 Resolution of Drafting Ambiguities. The Mortgagor

acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., Mortgagee) shall not be employed in the interpretation

hereof.

ARTICLE II

GRANTS AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Mortgaged Property. The Mortgagor hereby

grants, mortgages, bargains, sells, assigns and conveys to the Mortgagee, and hereby grants to the Mortgagee, a mortgage lien and security interest in and upon, all of the Mortgagor's estate, right, title and interest in, to and under the following property, whether now owned or held or hereafter acquired from time to time (collectively, the "Mortgaged Property"):

- (i) Land;
- (ii) Improvements;
- (iii) Leases;
- (iv) Rents;
- (v) Permits;
- (vi) Contracts;
- (vii) Records; and

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- (viii) Proceeds;

TO HAVE AND TO HOLD the Mortgaged Property, together with all estate, right, title and interest of the Mortgagor and anyone claiming by, through or under the Mortgagor in and to the Mortgaged Property and all rights and appurtenances relating thereto, unto the Mortgagee, its successors and assigns, for the purpose of securing the payment and performance in full of all the Secured Obligations.

SECTION 2.2 Assignment of Leases and Rents. As additional security

for the payment and performance in full of all the Secured Obligations and subject to the provisions of Article VI hereof, the Mortgagor absolutely,

presently, unconditionally and irrevocably assigns, transfers and sets over to the Mortgagee, and grants to the Mortgagee, all of the Mortgagor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Leases including, without limitation, the following (such assigned rights, the "Mortgagor's Interest"):

- (i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Leases;
- (ii) all claims, rights, powers, privileges and remedies of the Mortgagor, whether provided for in the Leases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants to perform or comply with any term of the Leases;

(iii) all rights to take all actions upon the happening of a default under the Leases as shall be permitted by the Leases or by law including, without limitation, the commencement, conduct and consummation of proceeding at law or in equity; and

(iv) the full power and authority, in the name of the Mortgagor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Mortgagor, as Landlord, is or may be entitled to take under the Leases.

SECTION 2.3 Secured Obligations. This Mortgage secures, and the

Mortgaged Property is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.4 Future Advances. This Mortgage shall secure future

advances. The maximum aggregate amount of all advances of principal under the Credit Agreement (which advances are obligatory to the extent the conditions set forth in the Credit Agreement relating thereto are satisfied) that may be outstanding hereunder at any time is \$430,000,000, plus interest thereon, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Mortgagee by reason of any default by the Mortgagor under the terms hereof, together with all other sums secured hereby.

SECTION 2.5 No Release. Nothing set forth in this Mortgage shall

relieve the Mortgagor from the performance of any term, covenant, condition or agreement on the Mortgagor's part to be performed or observed under or in respect of any of the Mortgaged Property or from any liability to any Person under or in respect of any of the Mortgaged Property or shall impose any obligation on the Mortgagee or any other Secured Party to perform or observe any such term, covenant, condition or agreement

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on the Mortgagor's part to be so performed or observed or shall impose any liability on the Mortgagee or any other Secured Party for any act or omission on the part of the Mortgagor relating thereto or for any breach of any representation or warranty on the part of the Mortgagor contained in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document, or under or in respect of the Mortgaged Property or made in connection herewith or therewith. The obligations of the Mortgagor contained in this Section 2.5 shall

survive the termination hereof and the discharge of the Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

SECTION 3.1 Authority and Validity.

The Mortgagor represents and warrants that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(ii) it is duly qualified to transact business and is in good standing in the state in which the Mortgaged Property is located;

(iii) it has full organizational power and lawful authority to execute and deliver this Mortgage and to mortgage and grant a Lien on and security interest in the Mortgaged Property and otherwise assign the Mortgagor's Interest and otherwise perform its obligations as contemplated herein, and all corporate and governmental actions, consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained; and

(iv) this Mortgage is a legal, valid and binding obligation of the Mortgagor, enforceable against the Mortgagor in accordance with its terms.

SECTION 3.2 Warranty of Title. The Mortgagor represents and

warrants that:

(i) it has good and marketable fee simple title to the Premises and the Landlord's interest and estate under or in respect of the Leases and good title to the interest it purports to own or hold in and to each of

the Permits, the Contracts and the Records, in each case subject to no Liens, except for Prior Liens;

(ii) it has good title to the interest it purports to own or hold in and to all rights and appurtenances to or that constitute a portion of the Mortgaged Property;

(iii) it is in compliance with each term, condition and provision of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property; and

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(iv) this Mortgage creates and constitutes a valid and enforceable first priority Lien on the Mortgaged Property, and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Fixtures, which first priority Lien and first priority security interest are subject only to Prior Liens.

SECTION 3.3 Condition of Mortgaged Property. The Mortgagor

represents and warrants that:

(i) there has been issued and there remains in full force and effect subject to no revocation, suspension, forfeiture or modification, each and every Permit necessary for the present and contemplated use, operation and occupancy of the Premises by the Mortgagor and its Tenants and the conduct of their respective businesses and all required zoning, building code, land use, environmental and other similar Permits, except to the extent that such failure, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) the Premises and the present and contemplated use and occupancy thereof comply with all applicable zoning ordinances, building codes, land use laws, set back or other development and use requirements of Governmental Authorities, except to the extent that such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) the Premises are served by all utilities (including, without limitation, public water and sewer systems) necessary for the present and contemplated use thereof, and all utility services are provided by public utilities and the Premises have accepted or are equipped to accept such utility services and the Mortgagor has not received notice of termination of such utility service;

(iv) all public roads and streets necessary for service of and access to the Premises for the present and contemplated use thereof have been completed and have been dedicated and accepted as such by the appropriate Governmental Authorities;

(v) the Mortgagor has access to the Premises from public roads and, to the extent applicable, public or private rail or waterway, sufficient to allow the Mortgagor and its Tenants and invitees to conduct their respective businesses at the Premises in accordance with sound commercial practices and the Mortgagor has not received notice of termination of such access;

(vi) the Mortgagor has not received notice of any Taking or the commencement or pendency of any action or proceeding therefor;

(vii) there has not occurred any Destruction of the Premises or any portion thereof as a result of any fire or other casualty which as of the date hereof has not been restored;

(viii) there are no disputes regarding boundary lines, location, encroachments or possession of any portions of the Mortgaged Property and, to the best knowledge of the Mortgagor after due and diligent inquiry, no state of facts exists which could give rise to any such claim;

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(ix) all liquid and solid waste disposal, septic and sewer systems located on the Premises are in a good and safe condition and repair and in compliance with all Requirements of Law, except to the extent that such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(x) no portion of the Premises is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Premises is located within such area, the Mortgagor has obtained the insurance prescribed in Article VIII hereof;

(xi) the Premises are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a portion of such lot or lots, and no other land or improvements is assessed and taxed together with the Premises or any portion thereof; and

(xii) there are no options or rights of first refusal to purchase or acquire all or any portion of the Mortgaged Property.

SECTION 3.4 Leases. The Mortgagor represents and warrants that:

(i) the Leases identified in the Real Property Officers' Certificate are the only Leases in existence on the date hereof with respect to the Premises;

(ii) true copies of such Leases have been previously delivered to the Mortgagee and there are no agreements with any Tenant under such Leases other than those agreements expressly set forth therein;

(iii) the Mortgagor is the sole owner of all of the Mortgagor's Interest in such Leases;

(iv) each of such Leases is in full force and effect, constitutes a legal, valid and binding obligation of the Mortgagor and the applicable Tenant thereunder, and is enforceable against the Mortgagor and such Tenant in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws of general application affecting the enforcement of creditor's rights;

(v) there is no default by Mortgagor or, to the best of Mortgagor's knowledge, by any Tenant, under any of such Leases and there is existing no condition which with the giving of notice or passage of time or both would cause a default thereunder;

(vi) all Rents due under such Leases have been paid in full;

(vii) none of the Rents reserved under such Leases have been assigned or otherwise pledged or hypothecated except in favor of the Mortgagee pursuant to the provisions hereof;

(viii) none of the Rents (other than any security deposit collected in accordance with the provisions of the applicable Lease) have been collected for more than one (1) month in advance;

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(ix) there exists no offsets or defenses to the payment of any portion of the Rents and the Mortgagor owes no monetary obligation to any Tenant under any such Lease;

(x) the Mortgagor has received no notice from any Tenant challenging the validity or enforceability of any such Lease;

(xi) no such Lease contains any option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; and

(xii) each such Lease is subordinate to this Mortgage either pursuant to its terms or pursuant to a recordable Subordination Agreement.

SECTION 3.5 Insurance. The Mortgagor represents and warrants that

(i) the Premises and the use, occupancy and operation thereof comply in all material respects with all Insurance Requirements and, to the best knowledge of the Mortgagor after due and diligent inquiry, there exists no default under any Insurance Requirement which could reasonably be expected to have a Material Adverse Effect, (ii) all premiums due and payable with respect to the Insurance Policies have been paid and (iii) all Insurance Policies are in full force and effect and the Mortgagor has not received notice of violation or cancellation thereof.

SECTION 3.6 Charges. The Mortgagor represents and warrants that

all Charges imposed upon or assessed against the Mortgaged Property have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable.

SECTION 3.7 Environmental. Except as set forth in Schedule 3.17 to

the Credit Agreement, the Mortgagor represents and warrants that:

(i) it has obtained all Permits which are necessary with respect to the ownership and operation of its business and the Mortgaged Property

under any and all applicable Environmental Laws and is in compliance with all terms and conditions thereof, except to the extent that such noncompliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) it is in compliance with any and all applicable Environmental Laws including, without limitation, all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws, except to the extent that such noncompliance, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice of demand letter pending or threatened against it or any Affiliate under the Environmental Laws which could result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect; and

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(iv) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may prevent compliance with the Environmental Laws, or which could reasonably be expected to give rise to any common law or legal liability including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other Environmental Law or related common law theory or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing or notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials which could reasonably be expected to result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.8 No Conflicts, Consents, etc. Neither the execution and

delivery hereof by the Mortgagor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Mortgagor is a party, or by which it may be bound or to which any of its properties or assets may be subject, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (ii) conflicts with any Requirement of Law applicable to the Mortgagor or its property or (iii) results in or requires the creation or imposition of any Lien (other than the Lien contemplated hereby) upon or with respect to any of the Mortgaged Property. No consent of any party (including, without limitation, equityholders or creditors of the Mortgagor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required for (i) the granting of a mortgage Lien on and security interest in the Mortgaged Property by the Mortgagor granted by it pursuant to this Mortgage or for the execution, delivery or performance hereof by the Mortgagor except as set forth in the Real Property Officers' Certificate, except for applicable recording and filing requirements, or (ii) the exercise by the Mortgagee of the remedies in respect of the Mortgaged Property pursuant to this Mortgage.

ARTICLE IV

CERTAIN COVENANTS OF MORTGAGOR

SECTION 4.1 Payment. The Mortgagor shall pay as and when the same

shall become due, whether at its stated maturity, by acceleration or otherwise, each and every amount payable by the Mortgagor under the Loan Documents and any Interest Rate Protection Agreements.

SECTION 4.2 Preservation of Corporate Existence. The Mortgagor

shall:

(i) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization;

(ii) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Mortgaged Property is located; and

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(iii) preserve and maintain in full force and effect all consents,

authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof.

SECTION 4.3 Title. The Mortgagor shall:

(i) (A) keep in effect all rights and appurtenances to or that constitute a part of the Mortgaged Property and (B) protect, preserve and defend its interest in the Mortgaged Property and title thereto;

(ii) (A) comply with each of the terms, conditions and provisions of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property, (B) forever warrant and defend to the Mortgagee the Lien and security interests created and evidenced hereby and the validity and priority hereof in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Mortgaged Property or any of the rights of the Mortgagee hereunder and (C) maintain a valid and enforceable first priority Lien on the Mortgaged Property and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Mortgaged Property, which first priority Lien and security interest shall be subject only to Permitted Collateral Liens; and

(iii) immediately upon obtaining knowledge of the pendency of any proceedings for the eviction of the Mortgagor from the Mortgaged Property or any part thereof by paramount title or otherwise questioning the Mortgagor's right, title and interest in, to and under the Mortgaged Property as warranted in this Mortgage, or of any condition that could give rise to any such proceedings, notify the Mortgagee thereof. The Mortgagee may participate in such proceedings and the Mortgagor will deliver or cause to be delivered to the Mortgagee all instruments requested by the Mortgagee to permit such participation. In any such proceedings, the Mortgagee may be represented by counsel selected by Mortgagor reasonably satisfactory to the Mortgagee at the expense of the Mortgagor. If, upon the resolution of such proceedings, the Mortgagor shall suffer a loss of the Mortgaged Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to the Mortgagee to be applied as Net Cash Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(g) of the Credit Agreement.

SECTION 4.4 Maintenance and Use of Mortgaged Property; Alterations.

(i) Maintenance. The Mortgagor shall cause the representations and warranties set forth in Section 3.3 hereof to continue to be true in each and every respect and shall pay or cause to be paid when due all Charges, costs and expenses relating thereto.

(ii) Maintenance of Premises. The Mortgagor shall not commit or suffer any waste on the Premises. The Mortgagor shall, at all times, maintain the Premises in good, safe and insurable operating order, condition and repair, reasonable wear and tear excepted, and shall as quickly as practicable make or cause to be made all repairs, structural or nonstructural, which are necessary or appropriate in the conduct of the Mortgagor's business. The Mortgagor shall (A) not, except as permitted in Section 4.4(iii)

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hereof, alter the occupancy or use of all or any portion of the Premises without the prior written consent of the Mortgagee and (B) take all other actions which from the character or use of the Premises may be necessary or appropriate to maintain and preserve its value. Except to the extent permitted pursuant to the provisions of Section 4.4(iii) hereof, the Mortgagor shall not remove, demolish

or alter the design or structural character of any Improvement now or hereafter erected upon all or any portion of the Premises, or permit any such removal, demolition or alteration, without the prior written consent of the Mortgagee.

(iii) Alterations. The Mortgagor shall not, without the prior written consent of the Mortgagee (which consent shall not be unreasonably withheld), make any Alteration to the Premises that, in each instance, costs more to effect than \$250,000 or which, during any calendar year, in the aggregate, cost more than \$1,000,000 to effect. No prior written consent of the Mortgagee shall be required for any Alteration to the Premises that, in each instance, costs less than \$250,000 to effect or which, during any calendar year, in the aggregate, do not cost more than \$1,000,000 to effect. Whether or not the

making of any Alteration shall require the consent of the Mortgagee pursuant to the immediately preceding sentence, the Mortgagor shall (A) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements and (B) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of Article X

hereof.

(iv) Permits. The Mortgagor shall maintain, or cause to be

maintained, in full force and effect all Permits contemplated by Section 3.3(i)

hereof. Unless and to the extent contested by the Mortgagor in accordance with the provisions of Article X hereof, the Mortgagor shall comply with all

requirements set forth in the Permits and all Requirements of Law applicable to all or any portion of the Mortgaged Property or the condition, use or occupancy of all or any portion thereof or any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force.

(v) Zoning. The Mortgagor shall not initiate, join in, or

consent to any change in the zoning or any other permitted use classification of the Premises without the prior written consent of the Mortgagee.

SECTION 4.5 Notices Regarding Certain Defaults. The Mortgagor

shall, promptly upon receipt of any written notice regarding (i) any default by the Mortgagor relating to the Mortgaged Property or any portion thereof or (ii) the failure to discharge any of Mortgagor's obligations with respect to the Mortgaged Property or any portion thereof described herein, furnish a copy of such notice to the Mortgagee.

SECTION 4.6 Access to Mortgaged Property, Books and Records; Other

Information. Upon reasonable prior notice and request to the Mortgagor, the

Mortgagee, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours and such other reasonable time as may be reasonably requested by the Mortgagee to all of the Mortgaged Property including, without limitation, all of the books, correspondence and records of the Mortgagor relating thereto. The Mortgagee and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Mortgagor agrees to render to the Mortgagee at the Mortgagor's cost and expense, such clerical and other assistance as may be requested by the Mortgagee with regard thereto. The Mortgagor shall, at any and all times, within a reasonable time after written request by the Mortgagee,

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furnish or cause to be furnished to the Mortgagee, in such manner and in such detail as may be reasonably requested by the Mortgagee, additional information with respect to the Mortgaged Property.

SECTION 4.7 Limitation on Liens; Transfer Restrictions. Except as

permitted pursuant to the Credit Agreement, the Mortgagor may not, without the prior written consent of the Mortgagee, further mortgage, encumber, hypothecate, sell, convey or assign all or any part of the Mortgaged Property or suffer or allow any of the foregoing to occur by operation of law or otherwise; provided,

however, that so long as no Event of Default shall have occurred and be

continuing, the Mortgagor shall have the right to suffer to exist the following Liens in respect of the Mortgaged Property: (i) Prior Liens (but not extensions, amendments, supplements or replacements of Prior Liens unless consented to by the Mortgagee), (ii) the Lien and security interest created by this Mortgage, (iii) Contested Liens, (iv) Liens of the kind and nature described in clause (f) of the definition of Permitted Liens and (v) Leases to the extent permitted pursuant to the provisions of Article V hereof (the Liens described in clauses

(i) through (v) of this sentence, collectively, "Permitted Collateral Liens").

SECTION 4.8 Environmental.

(i) Hazardous Materials. The Mortgagor shall (A) comply with

any and all present and future Environmental Laws except where the failure to comply could not reasonably be expected to have a Material Adverse Effect, (B) not release, store, treat, handle, generate, discharge or dispose of any Hazardous Materials on, under or from the Mortgaged Property in violation of (which violation could reasonably be expected to have a Material Adverse Effect)

or in a manner that could result in any material liability under any present and future Environmental Law and (C) take all necessary steps to initiate and expeditiously complete all remedial, corrective and other action to eliminate any such effect, provided, however, that Mortgagor shall not be required to

undertake any Remedial Action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP. In the event the Mortgagor fails to comply with the covenants in the preceding sentence, the Mortgagee may, in addition to any other remedies set forth herein, as agent for and at the Mortgagor's sole cost and expense, cause any necessary remediation, removal or response action relating to Hazardous Materials to be taken to achieve compliance with such covenants and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and shall bear interest at the Default Rate. The Mortgagee shall have the right to have an environmental report prepared as provided in Section 5.10 of the Credit Agreement. The

Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage or expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain by reason of the assertion against the Mortgagee or such Lender by any party of any claim relating to such Hazardous Materials referred to in clause (i) (B) of this Section 4.8 on, under or from the Mortgaged Property or actions taken with

respect thereto as authorized hereunder. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof; and

(ii) Asbestos. The Mortgagor shall not install nor permit to be

installed in or removed from the Mortgaged Property, asbestos or any asbestos-containing material (collectively, "ACM") except in compliance with all

applicable Environmental Laws, and with respect to any ACM currently present in

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the Mortgaged Property, the Mortgagor shall promptly either (A) remove any ACM which such Environmental Laws require to be removed or (B) otherwise comply with such Environmental Laws with respect to such ACM, all at the Mortgagor's sole cost and expense. If the Mortgagor shall fail so to remove any ACM or otherwise comply with such laws or regulations, the Mortgagee may, in addition to any other remedies set forth herein, take reasonable or necessary steps to eliminate such ACM from the Mortgaged Property or otherwise comply with applicable law, regulations or orders and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and bear interest at the Default Rate. The Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain, by reason of the assertion against the Mortgagee or such Lender by any third party of a claim as a result of the presence of any ACM and any removal thereof to the extent required by applicable Environmental Laws or compliance with all applicable Environmental Laws. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof.

SECTION 4.9 Estoppel Certificates. The Mortgagor shall, from time

to time, upon ten (10) Business Days' prior written request of the Mortgagee, execute, acknowledge and deliver to the Mortgagee an Officers' Certificate stating that this Mortgage, the Credit Agreement, each Interest Rate Protection Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Mortgage, the Credit Agreement, such Interest Rate Protection Agreement or such other Loan Document, as applicable, is in full force and effect as modified and setting forth such modifications) and stating the date to which principal and interest have been paid on the Loans.

ARTICLE V

LEASES

SECTION 5.1 Mortgagor's Affirmative Covenants with Respect to Leases.

With respect to each Lease, the Mortgagor shall:

(i) observe and perform all the obligations imposed upon the

Landlord under such Lease;

(ii) promptly send copies to the Mortgagee of all notices of default which the Mortgagor shall send or receive thereunder; and

(iii) enforce in a commercially reasonable manner all of the material terms, covenants and conditions contained in such Lease upon the part of the Tenant thereunder to be observed or performed.

SECTION 5.2 Mortgagor's Negative Covenants with Respect to Leases.

With respect to each Lease, the Mortgagor shall not, without the prior written consent of the Mortgagee:

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(i) receive or collect, or permit the receipt or collection of, any Rent under such Lease more than one (1) month in advance of the respective period in respect of which such Rent is to accrue, except:

- (A) in connection with the execution and delivery of such Lease (or of any amendment to such Lease), Rent thereunder may be collected and received in advance in an amount not in excess of one (1) month's Rent;
- (B) the amount held by Landlord as a reasonable security deposit thereunder; and
- (C) any amount received and collected for escalation and other charges in accordance with the terms of such Lease;

(ii) assign, transfer or hypothecate (other than to the Mortgagee hereunder) any Rent under such Lease whether then due or to accrue in the future or the interest of the Mortgagor as Landlord under such Lease;

(iii) enter into any amendment or modification of such Lease which would reduce the unexpired term thereof or decrease the amount of the Rents payable thereunder or impair the value or utility of the Mortgaged Property or the security provided by this Mortgage;

(iv) terminate (whether by exercising any contractual right of the Mortgagor to recapture leased space or otherwise) or permit the termination of such Lease or accept surrender of all or any portion of the space demised under such Lease prior to the end of the term thereof or accept assignment of such Lease to the Mortgagor unless:

- (A) the Tenant under such Lease has not paid the equivalent of two (2) months' Rent and the Mortgagor has made reasonable efforts to collect such Rent; or
- (B) the Mortgagor shall deliver to the Mortgagee an Officers' Certificate to the effect that the Mortgagor has entered into a new Lease (or Leases) for the space covered by the terminated or assigned Lease with a term (or terms) which expire(s) no earlier than the date on which the terminated or assigned Lease was to expire (excluding renewal options), and with a Tenant(s) having a creditworthiness (as reasonably determined by the Mortgagor) sufficient to pay the Rent due under the new Lease (or Leases), and the tenant(s) shall have commenced paying rent, including all operating expenses and other amounts payable under the new Lease (or Leases) without any abatement or concession; or
- (C) the Mortgagor or a subsidiary desires to use the space leased for its own purposes; or

(v) waive, excuse, condone or in any manner discharge or release any Tenants of or from the obligations of such Tenants under their respective Leases or guarantors of Tenants from

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obligations under any guarantees of the Leases except as the same would be done by a Prudent Operator with due regard for the security afforded the Mortgagee thereby.

SECTION 5.3 Additional Requirements with Respect to New Leases. In

addition to the requirements of Sections 5.1 and 5.2 hereof, the Mortgagor shall

not enter into any Lease after the date hereof unless the Tenant under such Lease has entered into a Subordination Agreement.

CONCERNING ASSIGNMENT OF LEASES AND RENTS

SECTION 6.1 License to the Mortgagor. The Mortgagee hereby grants

to the Mortgagor a license to collect and apply the Rents and to enforce the obligations of Tenants under the Leases. Immediately upon the occurrence and during the continuance of any Event of Default, the license granted in the immediately preceding sentence shall cease and terminate, with or without any notice, action or proceeding or the intervention of a receiver appointed by a court.

SECTION 6.2 Collection of Rents by the Mortgagee.

(i) Any Rents receivable by the Mortgagee hereunder, after payment of all proper costs and charges, shall be applied to the Secured Obligations. The Mortgagee shall be accountable to the Mortgagor only for Rents actually received by the Mortgagee. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

(ii) The Mortgagor hereby authorizes Tenant under each Lease to rely upon and comply with any and all notices or demands from the Mortgagee for payment of Rents to the Mortgagee and the Mortgagor shall have no claim against Tenant for Rents paid by Tenant to the Mortgagee pursuant to such notice or demand.

SECTION 6.3 No Release. Neither this Mortgage nor any action or

inaction on the part of the Mortgagee shall release Tenant under any Lease, any guarantor of any Lease or the Mortgagor from any of their respective obligations under such Leases or constitute an assumption of any such obligation on the part of the Mortgagee. No action or failure to act on the part of the Mortgagor shall adversely affect or limit the rights of the Mortgagee under this Mortgage or, through this Mortgage, under such Leases. Nothing contained herein shall operate or be construed to (i) obligate the Mortgagee to perform any of the terms, covenants or conditions contained in any Lease or otherwise to impose any obligation upon the Mortgagee with respect to such Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in such Lease in the event that Tenant under such Lease shall have been joined as a party defendant in any action by which the estate of such Tenant shall be terminated) or (ii) place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Premises.

SECTION 6.4 Irrevocable Interest. All rights, powers and

privileges of the Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions

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hereof, and the Mortgagor shall not take any action under the Leases or otherwise which is inconsistent with this Mortgage or any of the terms hereof and any such action inconsistent herewith or therewith shall be void.

SECTION 6.5 Amendment to Leases. Each Lease, including, without

limitation, all amendments, modifications, supplements, replacements, extensions and renewals thereof, shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

ARTICLE VII

TAXES AND CERTAIN STATUTORY LIENS

SECTION 7.1 Payment of Charges. Unless and to the extent contested

by the Mortgagor in accordance with the provisions of Article IX hereof, the

Mortgagor shall pay and discharge, or cause to be paid and discharged, from time to time when the same shall become due, all Charges. The Mortgagor shall, upon the Mortgagee's request, deliver to the Mortgagee receipts evidencing the payment of all such Charges.

SECTION 7.2 Escrow of Taxes. From and after the occurrence of an

Event of Default, at the option and upon the request of the Mortgagee, the Mortgagor shall deposit with the Mortgagee in an account maintained by the Mortgagee (the "Tax Escrow Fund"), on the first day of each month, an amount

estimated by the Mortgagee to be equal to one-twelfth of the annual real property taxes and other annual Charges required to be discharged by the

Mortgagor under Section 7.1 hereof. Such amounts shall be held by the Mortgagee

without interest to the Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such priority as the Mortgagee shall determine, on or before the respective dates on which such obligations or any part thereof would become delinquent. Nothing contained in this Article VII shall (i) affect any right or remedy of the Mortgagee under any

provision hereof or of any statute or rule of law to pay any such amount as provided above from its own funds and to add the amount so paid, together with interest at the Default Rate during such time that any amount remains outstanding, to the Secured Obligations or (ii) relieve the Mortgagor of its obligations to make or provide for the payment of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. During the continuance of any Event of Default, the

Mortgagee may, at its option, apply all or any part of the sums held pursuant to this Section 7.2 to payment and performance of the Secured Obligations. The

Mortgagor shall redeposit with the Mortgagee an amount equal to all amounts so applied as a condition to the cure, if any, of such Event of Default in addition to fulfillment of any other required conditions.

SECTION 7.3 Certain Statutory Liens. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall timely pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions and social security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or which might result in forfeiture of all or any part of the Mortgaged Property.

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SECTION 7.4 Stamp and Other Taxes. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Secured Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof the Mortgagee may advance the same and the amount so advanced shall be payable by the Mortgagor to the Mortgagee in accordance with the provisions of Section 14.5 hereof.

SECTION 7.5 Certain Tax Law Changes. In the event of the passage

after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any Charges, and imposing any Charges, either directly or indirectly, on this Mortgage, any Interest Rate Protection Agreement or any other Loan Document, the Mortgagor shall promptly pay to the Mortgagee such amount or amounts as may be necessary from time to time to pay any such Charges.

SECTION 7.6 Proceeds of Tax Claim. In the event that the proceeds

of any tax claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. The Mortgagee shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of the Mortgagee shall in a reasonably prompt manner be released to the Mortgagor.

ARTICLE VIII

INSURANCE

SECTION 8.1 Required Insurance Policies and Coverages. The

Mortgagor shall maintain in respect of the Premises the following insurance policies and coverages:

- (i) Physical hazard insurance on an "all risk" basis covering, without limitation, hazards commonly covered by fire and extended coverage, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in an amount equal to

the Full Replacement Cost of the Improvements, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed any such requirements, as would be maintained by a Prudent Operator;

(ii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any other adjoining streets, sidewalks and passageways, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon the Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed such requirements, in such amounts as would be maintained by a Prudent Operator;

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(iii) Explosion insurance in respect of any boilers, machinery and similar apparatus located on or comprising the Premises, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require, and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(iv) Business interruption insurance and/or loss of "rental value" insurance covering one (1) year of loss, the term "rental value" to mean the sum of (x) the total estimated gross rental income from tenant occupancy of the Improvements as furnished and equipped under Leases and (y) the total amount of all other charges which are the legal obligation of the Tenants of the Premises under Leases;

(v) If the Premises are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, each as amended, or any successor laws, flood insurance with policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(vi) Worker's compensation insurance as required by the laws of the state where the Premises are located to protect the Mortgagor and the Mortgagee against claims for injuries sustained in the course of employment at the Premises; and

(vii) such other insurance, against risks and with such policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require, and, if no such requirements shall have been imposed, in such amounts as would be maintained by a Prudent Operator.

SECTION 8.2 Required Form of Insurance Policies. Each Insurance

Policy described in Section 8.1 hereof shall provide that:

(i) it may not be modified, reduced, cancelled or otherwise terminated without at least thirty (30) days' prior written notice to the Mortgagee;

(ii) the Mortgagee is permitted to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due;

(iii) all losses thereunder shall be payable notwithstanding any act or negligence of the Mortgagor or its agents or employees which otherwise might have resulted in a forfeiture of all or a part of such insurance payments;

(iv) to the extent such Insurance Policy constitutes Property Insurance, all losses payable thereunder shall be payable to the Mortgagee, as loss payee, pursuant to a standard non-contributory New York mortgagee endorsement and shall be in an amount, at least sufficient to prevent coinsurance liability; and

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(v) with respect to Liability Insurance, the Mortgagee shall be named as an additional insured.

SECTION 8.3 Settlements. Settlement or adjustment of any claim

under any of the Insurance Policies, if such claim involves any loss in excess of \$1,000,000 (in the reasonable judgment of the Mortgagee), shall require the prior written approval of the Mortgagee, and the Mortgagor shall cause each such policy to contain a provision to such effect. The Mortgagor shall be permitted

to settle or adjust any claim under any of the Insurance Policies, if such claim involves any loss less than or equal to \$1,000,000 (in the reasonable judgment of the Mortgagee).

SECTION 8.4 Renewals. At least ten (10) days prior to the expiration

of any Insurance Policy, the Mortgagor shall deliver to the Mortgagee an Insurance Policy or Policies renewing or extending such expiring Insurance Policy or Policies, renewal or extension Insurance Certificates or other reasonable evidence of renewal or extension providing that the Insurance Policies are in full force and effect.

SECTION 8.5 Additional Insurance. The Mortgagor shall not purchase

separate insurance policies concurrent in form or contributing in the event of loss with those Insurance Policies required to be maintained under this Article

VIII unless the Mortgagee is included thereon as an additional insured and, if

applicable, with loss payable to the Mortgagee under an endorsement containing the provisions described in Section 8.2 hereof. The Mortgagor shall immediately

notify the Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to the Mortgagee the Insurance Policy or Insurance Certificate evidencing such insurance.

SECTION 8.6 Blanket Coverage. The Mortgagor may maintain the

coverages required by Section 8.1 hereof under blanket policies covering the

Premises and other locations owned or operated by the Mortgagor or an Affiliate of the Mortgagor if the terms of such blanket policies otherwise comply with the provisions of Section 8.1 hereof and contain specific coverage allocations in

respect of the Premises complying with the provisions of Section 8.1 hereof.

SECTION 8.7 Delivery After Foreclosure. In the event that the

proceeds of any insurance claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the Insurance Policies required to be maintained pursuant to this Mortgage during any redemption period.

ARTICLE IX

CONTESTING OF PAYMENTS

SECTION 9.1 Contesting of Taxes and Certain Statutory Liens. The

Mortgagor may at its own expense contest the validity, amount or applicability of any Charges by appropriate legal or administrative proceedings, prosecution of which operates to prevent the collection or enforcement thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy such obligations; provided, however, that (i) any such contest shall be conducted in

good faith by appropriate proceedings instituted with reasonable promptness and diligently conducted and (ii) in connection with such contest, the

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Mortgagor shall have (A) made provision for the payment of such contested Charge on the Mortgagor's books if and to the extent required by GAAP, or (B) at the option and upon the request of the Mortgagee, have deposited with the Mortgagee a sum sufficient to pay and discharge such Charge and the Mortgagee's estimate of all interest and penalties related thereto, properly bonded such amount or obtained a stay of enforcement of any such Lien pending the final determination of such proceeding and (C) in the case of any contested judgment, delivered to the Mortgagee an instrument in which an insurance carrier acceptable to the Mortgagee shall have agreed in writing that full insurance coverage (subject to a customary deductible) exists in respect of such contested judgment. Notwithstanding the foregoing provisions of this Section 9.1, (i) no contest of

any such obligations may be pursued by the Mortgagor if such contest would expose the Mortgagee or any Lender to (A) any possible criminal liability or (B) unless the Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to the Mortgagee or such Lender, as the case may be, any additional civil liability for failure to comply with such obligations and (ii) if at any time payment or performance of any obligation contested by the Mortgagor pursuant to this Section 9.1 shall become necessary to prevent the

imposition of remedies because of non-payment, the Mortgagor shall pay or perform the same in sufficient time to prevent the imposition of remedies in

respect of such default or prospective default.

SECTION 9.2 Contesting of Insurance. The Mortgagor shall not take

any action that could be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises and the Mortgagor shall otherwise comply in all respects with all Insurance Requirements in respect of the Premises; provided, however,

that the Mortgagor may, at its own expense and after written notice to the Mortgagee, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under Article VIII hereof or (ii) cause the Insurance Policy containing

any such Insurance Requirement to be replaced by a new policy complying with the provisions of Article VIII hereof.

ARTICLE X

DESTRUCTION, CONDEMNATION AND RESTORATION

SECTION 10.1 Destruction. If there shall occur any Destruction,

other than a Destruction for a de minimis amount (which for the purposes of this Section 10.1 shall mean any Destruction for an amount less than or equal to

\$25,000), the Mortgagor shall promptly send to the Mortgagee a written notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned and shall be paid to the Mortgagee and deposited in the Collateral Account. All such proceeds, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net

Insurance Proceeds"), shall be applied in accordance with the provisions of

Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.2 Condemnation. If there shall occur any Taking or the

commencement of any proceeding thereof, the Mortgagor shall immediately notify the Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. The Mortgagee may, at its option, participate in

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any proceedings or negotiations which might result in any Taking, and the Mortgagor shall deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. The Mortgagee may be represented by counsel satisfactory to it at the expense of the Mortgagor in connection with any such participation. The Mortgagor shall pay all fees, costs and expenses incurred by the Mortgagee in connection with any Taking and in seeking and obtaining any award or payment on account thereof. Any proceeds, award or payment in respect of any Taking are hereby assigned and shall be paid to the Mortgagee. The Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Condemnation Award"),

shall be applied in accordance with the provisions of Sections 10.3, 10.4 and

10.5 hereof.

SECTION 10.3 Restoration. So long as no Event of Default shall

have occurred and be continuing, in the event there shall be a Net Condemnation Award or Net Insurance Proceeds in an amount less than \$1,000,000, the Mortgagor shall have the right, at the Mortgagor's option, to apply such Net Condemnation Award or Net Insurance Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit Agreement or to

perform a restoration (each, a "Restoration") of the Premises. In the event the

Mortgagor elects to perform a Restoration pursuant to the immediately preceding sentence, the Mortgagor shall within thirty (30) days after the date that the Mortgagor receives notice of collection by the Mortgagee of the applicable Net Insurance Proceeds or Net Condemnation Award, as the case may be, deliver to the Mortgagee (i) a written notice of such election and (ii) an Officers'

Certificate stating that (A) the Net Insurance Proceeds or Net Condemnation Award, as the case may be, shall be utilized to perform a Restoration in the manner contemplated by this Section 10.3 and (B) no Event of Default has

occurred and is continuing (the items described in clauses (i) and (ii) of this sentence, collectively, the "Restoration Election Notice"). In the event the

Mortgagee does not receive a Restoration Election Notice within such 30-day period, the Mortgagee may apply any such Net Insurance Proceeds or Net Condemnation Award held by the Mortgagee to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit

Agreement or, at the option of the Mortgagee, may continue to hold such Net Insurance Proceeds or Net Condemnation Award in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations. In the event the Mortgagor elects to perform any Restoration contemplated by this Section 10.3, the Mortgagee shall release such Net

Condemnation Award or Net Insurance Proceeds to the Mortgagor as soon as practicable following receipt of a Restoration Election Notice in accordance with the provisions of Section 8.2(ii) of the Security Agreement. The Mortgagor

shall, within fifteen (15) days following the date of its receipt of any proceeds in respect of a Destruction or Taking, as the case may be, commence and diligently continue to perform the Restoration of that portion or portions of the Improvements subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Premises will be in the same condition and shall be of at least equal value and utility for its intended purposes as the Premises was immediately prior to such Destruction or Taking. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.4 Major Restoration. In the event there shall be a Net

Condemnation Award or Net Insurance Proceeds in an amount equal to or greater than \$1,000,000, the Mortgagee shall have the option to apply such Net Condemnation Award or Net Insurance Proceeds, as the case may be, to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f)

of the Credit Agreement or to require a Restoration of the Premises. In the event a Restoration is to be performed under this Section 10.4, the Mortgagee

shall not release any part of the Net Condemnation Award or Net Insur-

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ance Proceeds except in accordance with the provisions of Section 10.5 hereof,

and the Mortgagor shall, prior to commencing any work to effect a Restoration of the Premises, promptly (but in no event later than ninety (90) days following any Destruction or Taking) furnish to the Mortgagee:

(i) complete plans and specifications (the "Plans and

Specifications") for the Restoration;

(ii) a certificate (an "Architect's Certificate") of an

independent, reputable architect or engineer acceptable to the Mortgagee and licensed in the state where the Premises are located (A) listing all permits and approvals required by law in connection with the Restoration, (B) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained, (C) stating that the Plans and Specifications have been reviewed and approved by the signatory thereto, (D) stating such signatory's estimate (an "Estimate") of the costs

of completing the Restoration and (E) stating that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises will be approximately equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration; and

(iii) if the Estimate exceeds the Net Insurance Proceeds or Net Condemnation Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit (a "Restoration Letter of Credit") or other

irrevocable and unconditional commitment to provide funds (each, a "Restoration Commitment") for the payment of the excess cost of such

Restoration, payable to or in favor of the Mortgagee, as Collateral Agent, which bond, guaranty, Restoration Letter of Credit or Restoration Commitment (A) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to the Mortgagee and, in the case of a Restoration Letter of Credit or Restoration Commitment, shall be provided

by a Lender or other financial institution having capital and surplus in excess of \$500 million as shown in its most recent available statement of financial condition and (B) shall be in an amount not less than the excess of the amount of the Estimate over the amount of the Net Condemnation Award or Net Insurance Proceeds, as the case may be, then held by the Mortgagee for application toward the cost of such Restoration.

The Mortgagee shall have the right to review and approve the Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed. Promptly upon any approval of the Plans and Specifications by the Mortgagee, the Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.5 Restoration Advances Following Destruction or Taking of

Mortgaged Property. In the event the Mortgagor shall be required or permitted

to perform a Restoration of the Premises as provided in Section 10.4 hereof, the

Mortgagee shall apply any Net Insurance Proceeds or the Net Condemnation Award held by the Mortgagee on account of the applicable Destruction or Taking to the payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to the Mortgagor or, at the Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other Persons rendering services or material for such Restoration, subject to the following conditions:

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(i) Each request for payment shall be made on at least ten (10) days' prior notice to the Mortgagee and shall be accompanied by an Architect's Certificate stating (A) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as approved by the Mortgagee, and in accordance with all provisions of law, (B) the sums requested are required to reimburse the Mortgagor for payments by the Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by the Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (C) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be and (D) that the amount of the Net Insurance Proceeds or Net Condemnation Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an opinion of counsel to the Mortgagor (which counsel shall be independent and acceptable to the Mortgagee), or a title insurance policy, binder or endorsement in form and substance satisfactory to the Mortgagee confirming that (A) all Liens (other than Permitted Collateral Liens) covering that part of the Restoration previously paid for, if any, have been waived and (B) there has not been filed with respect to all or any portion of the Premises any Lien (other than Permitted Collateral Liens); and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Architect's Certificate listing all Permits necessary to comply with all Requirements of Law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event that there shall be any surplus after application of the Net Condemnation Award or the Net Insurance Proceeds to Restoration of the Improvements, such surplus shall be applied as Net Cash Proceeds in accordance with Section 2.13(f) of the Credit Agreement or, at the option of the Mortgagee,

shall be held by the Mortgagee in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1 Events of Default. It shall be an Event of Default

hereunder if there shall have occurred and be continuing an Event of Default under the Credit Agreement.

SECTION 11.2 Remedies in Case of an Event of Default. If any Event

of Default shall have occurred and be continuing, the Mortgagee may at its option, in addition to any other action permitted under this Mortgage or the Credit Agreement or by law, statute or in equity, take one or more of the following actions to the greatest extent permitted by local law:

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(i) by written notice to the Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

(ii) personally, or by its agents or attorneys, (A) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Mortgagor relating thereto and, exclude the Mortgagor, its agents and servants wholly therefrom, (B) use, operate, manage and control the Premises and conduct the business thereof, (C) maintain and restore the Premises, (D) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as the Mortgagee may deem advisable, (E) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise or (F) collect and receive all Rents. The Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management except that any amounts so received by the Mortgagee shall be applied as follows:

FIRST: to pay reasonable costs and expenses (including, -----
without limitation, attorneys' fees and expenses) of so entering upon, taking possession of, holding, operating and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges which the Mortgagee may consider necessary or desirable to pay, and any other amounts due to the Mortgagee;

SECOND: without duplication of amounts applied pursuant to -----
clause FIRST above, to the indefeasible payment in full in cash of the -----
Secured Obligations (other than obligations arising under any Interest Rate Protection Agreement) in accordance with the terms of the Credit Agreement;

THIRD: without duplication of amounts applied pursuant to -----
clauses FIRST and SECOND above, to the indefeasible payment in full in -----
cash pro rata of the obligations arising under the Interest Rate -----
Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

FOURTH: the balance, if any, to the Person lawfully entitled -----
thereto (including the Mortgagor or its successors or assigns), if all conditions to the release hereof shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by the Mortgagee and thereafter applied to any future payments required to be made in accordance with clauses FIRST, SECOND and THIRD above.

(iii) with or without entry, personally or by its agents or attorneys, (A) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the provisions of Section 11.3 or (B) institute -----
and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

(iv) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Credit Agreement and the other Loan Documents, or in aid of the execution of any power granted

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in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

SECTION 11.3 Sale of Mortgaged Property if Event of Default Occurs;

Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing, the Mortgagee may institute an action to foreclose this Mortgage or take such other action as may be permitted and available to the Mortgagee at law or in equity for the enforcement of the Credit Agreement and realization on the Mortgaged Property and proceeds thereon through power of sale or to final judgment and execution thereof for the Secured Obligations, and in furtherance thereof the Mortgagee may sell the Mortgaged Property at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. The Mortgagee may execute and deliver to the purchaser at such sale a conveyance of the Mortgaged Property in fee simple and an assignment or conveyance of all the Mortgagor's Interest in the Leases and the Mortgaged Property, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to make any such recitals, sale, assignment and conveyance, and all of the acts of the Mortgagee as such attorney in fact are hereby ratified and confirmed. The Mortgagor agrees that such recitals shall be binding and conclusive upon the Mortgagor and that any assignment or conveyance to be made by the Mortgagee shall divest the Mortgagor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Mortgaged Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which the Mortgagee may have hereunder, at law or in equity. So long as the Secured Obligations, or any part thereof, remain unpaid, the Mortgagor agrees that possession of the Mortgaged Property by the Mortgagor, or any person claiming under the Mortgagor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Mortgage, the Mortgagor and any person in possession under the Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels in such manner or order as the Mortgagee in its sole discretion may elect. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or all amounts secured hereby are paid in full.

(ii) In the event of any sale made under or by virtue of this Article XI, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of the Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

(iii) The proceeds of any sale made under or by virtue of this Article XI, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article XI or otherwise, shall be applied as follows:

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FIRST: to pay the costs and expenses incurred by the Mortgagee in enforcing its remedies under this Mortgage;

SECOND: to pay the costs and expenses of the sale and of any receiver of the Mortgaged Property or any part thereof appointed pursuant to Section 11.5(ii);

THIRD: without duplication of the amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash of the Secured Obligations (other than the obligations arising under the Interest Rate Protection Agreements) in accordance with the terms of the Credit Agreement;

FOURTH: without duplication of the amounts applied pursuant to clauses FIRST, SECOND and THIRD above, to the indefeasible payment in full in cash pro rata of the obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

FIFTH: the balance, if any, to the Person lawfully entitled thereto

(including the Mortgagor or its successors or assigns).

(iv) The Mortgagee (on behalf of any Lender or on its own behalf) or any Lender or any of their respective Affiliates may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article XI and, in lieu of paying cash therefor, may make settlement for

the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Mortgagee, or such Lender in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Mortgagee or such Lender is authorized to deduct under this Mortgage.

(v) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(vi) If the Premises is comprised of more than one parcel of land, the Mortgagee may take any of the actions authorized by this Section 11.3 in respect

of any or a number of individual parcels.

SECTION 11.4 Additional Remedies in Case of an Event of Default.

(i) The Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof, and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Mortgage. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, the Mortgagee shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Prop-

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erty; provided, however, that in no case shall the Mortgagee receive a greater

amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(ii) Any recovery of any judgment by the Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Mortgaged Property or any part thereof, or any conveyances, powers, rights and remedies of the Mortgagee hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Mortgagee under this Section 11.4

shall be applied in accordance with the provisions of Section 11.3(iii).

SECTION 11.5 Legal Proceedings After an Event of Default.

(i) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, the Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(ii) Upon the occurrence and during the continuance of an Event of Default, the Mortgagee shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. The Mortgagor hereby consents to the appointment of such receiver. Notwithstanding

the appointment of any receiver, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Credit Agreement to the Mortgagee.

(iii) The Mortgagor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, the Mortgagor hereby expressly (A) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Mortgage, (B) waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (C) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or

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proceeding brought in connection with this Mortgage and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (D) covenants not to hinder, delay or impede the execution of any power granted or delegated to the Mortgagee by this Mortgage but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Mortgagee shall not be liable for any incorrect or improper payment made pursuant to this Article XI in

the absence of gross negligence or willful misconduct.

SECTION 11.6 Remedies Not Exclusive. No remedy conferred upon or

reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of the Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may elect. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Mortgagor to pay the entire sum then due, and the Mortgagor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

ARTICLE XII

SECURITY AGREEMENT AND FIXTURE FILING

SECTION 12.1 Security Agreement. To the extent that the Mortgaged

Property includes personal property or items of personal property which are or are to become fixtures under applicable law, this Mortgage shall also be construed as a security agreement under the UCC; and, upon and during the continuance of an Event of Default, the Mortgagee shall be entitled with respect to such personal property to exercise all remedies hereunder, all remedies available under the UCC with respect to fixtures and all other remedies available under applicable law. Without limiting the foregoing, such personal property may, at the Mortgagee's option, (i) be sold hereunder together with any sale of any portion of the Mortgaged Property or otherwise, (ii) be sold pursuant to the UCC, or (iii) be dealt with by the Mortgagee in any other manner permitted under applicable law. The Mortgagee may require the Mortgagor to assemble such personal property and make it available to the Mortgagee at a place to be designated by the Mortgagee. The Mortgagor acknowledges and agrees that a disposition of the personal property in accordance with the Mortgagee's rights and remedies in respect to the Mortgaged Property as heretofore provided is a commercially reasonable disposition thereof; provided, however, that the

Mortgagee shall give the Mortgagor not less than ten (10) days' prior notice of the time and place of any intended disposition.

SECTION 12.2 Fixture Filing. To the extent that the Mortgaged

Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing hereof in the real estate records of the county in which such Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to such Mortgaged Property, and the following information is applicable for the purpose of such fixture filing, to wit:

<TABLE>
<CAPTION>

<S>	<C>
Name and Address of the debtor:	Name and Address of the secured party:
The Mortgagor having the address described in the Preamble hereof.	The Mortgagee having the address described in the Preamble hereof.

This Financing Statement covers the following types or items of property:

The Mortgaged Property.

This instrument covers goods or items of personal property which are or are to become fixtures upon the property.

The name of the record owner of the Property on which such fixtures are or are to be located is the Mortgagor.

</TABLE>

ARTICLE XIII
FURTHER ASSURANCES

SECTION 13.1 Recording Documentation To Assure Security. The

Mortgagor shall, forthwith after the execution and delivery hereof and thereafter, from time to time, cause this Mortgage and any financing statement, continuation statement or similar instrument relating to any thereof or to any property intended to be subject to the Lien hereof to be filed, registered and recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the validity and priority thereof or the Lien hereof purported to be created upon the Mortgaged Property and the interest and rights of the Mortgagee therein. The Mortgagor shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all Federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

SECTION 13.2 Further Acts. The Mortgagor shall, at the sole cost

and expense of the Mortgagor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, financing statements, continuation statements, instruments and assurances as the Mortgagee shall from time to time request, which may be necessary in the reasonable judgment of the Mortgagee from time to time to assure, perfect, convey, assign, mortgage, transfer and confirm unto the Mortgagee, the property and rights hereby conveyed or assigned or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee or for carry-

ing out the intention or facilitating the performance of the terms hereof or the filing, registering or recording hereof. Without limiting the generality of the foregoing, in the event that the Mortgagee desires to exercise any remedies, consensual rights or attorney-in-fact powers set forth in this Mortgage and reasonably determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Mortgagee, the Mortgagor agrees to use its best efforts to assist and aid the Mortgagee to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers. In the event the Mortgagor shall fail after demand to execute any instrument or take any action required to be executed or taken by the Mortgagor under this Section

13.2, the Mortgagee may execute or take the same as the attorney-in-fact for the

Mortgagor, such power of attorney being coupled with an interest and is irrevocable.

SECTION 13.3 Additional Security. Without notice to or consent of

the Mortgagor and without impairment of the Lien and rights created by this Mortgage, the Mortgagee may accept (but the Mortgagor shall not be obligated to furnish) from the Mortgagor or from any other Person, additional security for the Secured Obligations. Neither the giving hereof nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, and, second, to the security created by this Mortgage without affecting the Mortgagee's Lien and rights under this Mortgage.

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Covenants To Run with the Land. All of the grants,

covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to, and bind the successors and assigns of, the Mortgagor. If there shall be more than one mortgagor with respect to the Mortgaged Property, the covenants and warranties hereof shall be joint and several.

SECTION 14.2 No Merger. The rights and estate created by this

Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Mortgagee unless the Mortgagee shall have consented to such merger in writing.

SECTION 14.3 Concerning Mortgagee.

(i) The Mortgagee has been appointed as collateral agent pursuant to the Credit Agreement. The actions of the Mortgagee hereunder are subject to the provisions of the Credit Agreement. The Mortgagee shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Mortgaged Property), in accordance with this Mortgage and the Credit Agreement. The Mortgagee may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Mortgagee may resign and a successor Mortgagee may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Mortgagee by a successor Mortgagee, that successor Mortgagee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Mortgagee under this Mortgage, and the retiring Mortgagee shall thereupon be discharged from its duties and obligations under this Mortgage. After any retiring Mortga-

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gee's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Mortgagee.

(ii) The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property in its possession if such Mortgaged Property is accorded treatment substantially equivalent to that which the Mortgagee, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Mortgagee nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Mortgaged Property.

(iii) The Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Lender, the Mortgagee shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include the Mortgagee in its individual capacity as a Lender. The Mortgagee may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Mortgagor or any Affiliate of the Mortgagor to the same extent as if the Mortgagee were not acting as collateral agent.

(v) If any portion of the Mortgaged Property also constitutes collateral granted to the Mortgagee under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect

of such collateral, the Mortgagee, in its sole discretion, shall select which provision or provisions shall control.

SECTION 14.4 Mortgagee May Perform; Mortgagee Appointed Attorney-in-

Fact. If the Mortgagor shall fail to perform any covenants contained in this

Mortgage (including, without limitation, the Mortgagor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Mortgagor under any Mortgaged Property) or if any warranty on the part of the Mortgagor contained herein shall be breached, the Mortgagee may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the

Mortgagee shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Mortgagor fails to pay or perform as and when required hereby and which the Mortgagor does not contest in accordance with the provisions of Section 14.5 hereof. Any and all reasonable

amounts so expended by the Mortgagee shall be paid by the Mortgagor in accordance with the provisions of Article IX hereof. Neither the provisions of

this Section 14.4 nor any action taken by the Mortgagee pursuant to the

provisions of this Section 14.4 shall prevent any such failure to observe any

covenant contained in this Mortgage nor any breach of warranty from constituting an Event of Default. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact, with full authority in the place and stead of the Mortgagor and in the name of the Mortgagor, or otherwise, from time to time in the Mortgagee's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents which the Mortgagee may deem necessary or advisable to accomplish the purposes hereof.

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The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 14.5 Expenses. The Mortgagor will upon demand pay to the

Mortgagee the amount of any and all reasonable costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Mortgagee may incur in connection with (i) any action, suit or other proceeding affecting the Mortgaged Property or any part thereof commenced, in which action, suit or proceeding the Mortgagee is made a party or participates or in which the right to use the Mortgaged Property or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Mortgagee to defend or uphold the Lien hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Mortgaged Property with any Requirements of Law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Mortgaged Property, (v) the exercise or enforcement of any of the rights of the Mortgagee or any Secured Party hereunder or (vi) the failure by the Mortgagor to perform or observe any of the provisions hereof. All reasonable amounts expended by the Mortgagee and payable by the Mortgagor under this Section 14.5 shall be due upon demand therefor (together

with interest thereon accruing at the Default Rate during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations. The Mortgagor's obligations under this Section 14.5 shall survive the termination hereof and the

discharge of the Mortgagor's other obligations under this Mortgage, the Credit Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

SECTION 14.6 Indemnity.

(i) The Mortgagor agrees to indemnify, pay and hold harmless the Mortgagee and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Mortgagee and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other

liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnatee shall be designated a party thereto), which may be imposed on, incurred by or asserted against that Indemnatee, in any

manner relating to or arising out hereof, any Interest Rate Protection Agreement or any other Loan Document (including, without limitation, any misrepresentation by the Mortgagor in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document) (the "Indemnified Liabilities"); provided, however, that

the Mortgagor shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all appeals and the expiration of time to appeal) by a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence, bad faith or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Mortgagor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

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(ii) Survival. The obligations of the Mortgagor contained in this

Section 14.6 shall survive the termination hereof and the discharge of the

Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

(iii) Reimbursement. Any amount paid by any Indemnitee as to which

such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Mortgaged Property.

SECTION 14.7 Continuing Security Interest; Assignment. This

Mortgage shall create a continuing Lien on and security interest in the Mortgaged Property and shall (i) be binding upon the Mortgagor, its respective successors and assigns and (ii) inure, together with the rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and the other Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Loan Party) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Lender may assign or otherwise transfer any indebtedness held by it secured by this Mortgage to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender, herein or otherwise, subject however, to the provisions of the Credit Agreement and any applicable Interest Rate Protection Agreement.

SECTION 14.8 Termination; Release. When all the Secured

Obligations have been paid in full and the Commitments of the Lenders to make any Loan or to issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated, this Mortgage shall terminate. Upon termination hereof or any release of the Mortgaged Property or any portion thereof in accordance with the provisions of the Credit Agreement, the Mortgagee shall, upon the request and at the sole reasonable cost and expense of the Mortgagor, forthwith assign, transfer and deliver to the Mortgagor, against receipt and without recourse to or warranty by the Mortgagee, such of the Mortgaged Property to be released (in the case of a release) as may be in possession of the Mortgagee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

SECTION 14.9 Modification in Writing. No amendment, modification,

supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by the Mortgagee. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Mortgagor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mortgage or any other Loan Document, no notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 14.10 Notices. Unless otherwise provided herein or in the

Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to the Mortgagor or the Mortgagee, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall

be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 14.10.

SECTION 14.11 GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

THIS MORTGAGE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF MORTGAGED PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. MORTGAGOR AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS SET FORTH IN THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE MORTGAGEE SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY MORTGAGOR REFUSES TO ACCEPT SERVICE, MORTGAGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF MORTGAGEE TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. THE PLEDGORS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 14.12 Severability of Provisions. Any provision hereof

which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 14.13 Limitation on Interest Payable. It is the intention

of the parties to conform strictly to the usury laws, whether state or Federal, that are applicable to the transaction of which this Mortgage is a part. All agreements between the Mortgagor and the Mortgagee whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by the Mortgagor for the use, forbearance or detention of the money to be loaned under the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, or for the payment or performance of any covenant or obligation contained herein or in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any such provision, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances the Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to the Mortgagor. All sums paid or agreed to be paid for the use, forbearance or deten-

tion of the principal under any extension of credit by the Mortgagee shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date hereof until payment in full of the Secured Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 14.14 Business Days. In the event any time period or any

date provided in this Mortgage ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 14.15 Relationship. The relationship of the Mortgagee to

the Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage, any Interest Rate Protection Agreement or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint

venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagor and the Mortgagee other than as lender and borrower and mortgagor and mortgagee.

SECTION 14.16 Waiver of Stay.

(i) The Mortgagor agrees that in the event that the Mortgagor or any property or assets of the Mortgagor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or the Mortgagor shall otherwise be a party to any Federal or state bankruptcy, insolvency, moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such law is applicable, then, in any such case, whether or not the Mortgagee has commenced foreclosure proceedings under this Mortgage, the Mortgagee shall be entitled to relief from any such automatic stay as it relates to the exercise of any of the rights and remedies (including, without limitation, any foreclosure proceedings) available to the Mortgagee as provided in this Mortgage or in any other Security Document.

(ii) The Mortgagee shall have the right to petition or move any court having jurisdiction over any proceeding described in Section 14.16(i) hereof for

the purposes provided therein, and the Mortgagor agrees (i) not to oppose any such petition or motion and (ii) at the Mortgagor's sole cost and expense, to assist and cooperate with the Mortgagee, as may be requested by the Mortgagee from time to time, in obtaining any relief requested by the Mortgagee, including, without limitation, by filing any such petitions, supplemental petitions, requests for relief, documents, instruments or other items from time to time requested by the Mortgagee or any such court.

SECTION 14.17 No Credit for Payment of Taxes or Impositions. The

Mortgagor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and the Mortgagor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Charge on the Mortgaged Property or any part thereof.

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SECTION 14.18 No Claims Against the Mortgagee. Nothing contained

in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 14.19 Obligations Absolute.

All obligations of the Mortgagor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Mortgagor or any other Obligor;

(ii) any lack of validity or enforceability of the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof, any Interest Rate Protection Agreement or any other Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 14.9 hereof; or

(vi) any other circumstances which might otherwise constitute a

defense available to, or a discharge of, the Mortgagor.

SECTION 14.20 Mortgagee's Right To Sever Indebtedness.

(i) The Mortgagor acknowledges that (A) the Mortgaged Property does not constitute the sole source of security for the payment and performance of the Secured Obligations and that the Secured Obligations are also secured by property of the Mortgagor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (B) the number of such jurisdictions

and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a sepa-

rate credit agreement or Interest Rate Protection Agreement and (C) the Mortgagor intends that the Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that the Mortgagee would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement or Interest Rate Protection Agreement, mortgage or security instrument. In furtherance of such intent, the Mortgagor agrees that the Mortgagee may at any time by notice (an "Allocation Notice") to the

Mortgagor allocate a portion (the "Allocated Indebtedness") of the Secured

Obligations to the Mortgaged Property and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of the Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Protection Agreement, any other Loan Document or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to the Mortgagor and shall not be available hereunder to satisfy any Secured Obligations of the Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien hereof or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by the Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and the Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 14.20, the

proceeds received by the Mortgagee pursuant to this Mortgage shall be applied by the Mortgagee in accordance with the provisions of Section 11.3(iii) hereof.

(ii) The Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien hereof or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because the Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by the Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that the Mortgagee is not entitled to a deficiency judgment, the Mortgagor shall not (A) introduce in any other jurisdiction such judgment as a defense to enforcement against the Mortgagor of any remedy in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document or (B) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 14.20, including, without limitation, any amendment to this Mortgage, any substitute promissory note or affidavit or certificate of any kind, the Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of the Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

(iv) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 14.20 shall be effective only to the maximum extent permitted by law.

SECTION 14.21 Shortened Redemption Election.

deeds of trust, deeds to secure debt or similar security instruments (collectively, the "Security Instruments").

C. Tenant has agreed to subordinate the Lease to the Security Instruments and to the lien thereof and Collateral Agent has agreed not to disturb Tenant's possessory rights in the Leased Premises under the Lease on the terms and conditions hereinafter set forth.

A G R E E M E N T:
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NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth

in the Lease, the Lease and the leasehold estate created thereby and all of Tenant's rights thereunder are and shall at all times be subject and subordinate in all respects to the Security Instruments and the lien thereof, and to all rights of Collateral Agent thereunder, and to any and all advances to be made thereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof.

2. Nondisturbance. So long as Tenant complies with the provisions of

this Agreement, pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Collateral Agent agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the Leased Premises as described in the Lease will not be disturbed during the term of the Lease by reason of a foreclosure. For purposes of

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this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instruments, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any

Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness.

4. No Liability. Notwithstanding anything to the contrary contained

herein or in the Lease, it is specifically understood and agreed that neither the Collateral Agent, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (including Landlord); or

(b) liable for any failure of any prior landlord (including Landlord) to construct any improvements or bound by any covenant to construct any improvement either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space pursuant to any expansion right contained in the Lease; or

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including Landlord); or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord) or by any security deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or

(e) liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property; or

(f) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the written consent of Collateral Agent; or

(g) bound by any consensual or negotiated surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

Notwithstanding the foregoing, Tenant reserves its right to any and all claims or causes of action (i) against such prior landlord for prior losses or damages and (ii) against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

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5. Certain Acknowledgments and Agreements by Tenant. (a) Tenant has

notice that the Lease and the rents and all other sums due thereunder have been assigned to Collateral Agent as security for the notes secured by the Security Instruments. In the event Collateral Agent notifies Tenant of the occurrence of a default under the Security Instruments and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Collateral Agent, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Collateral Agent or as otherwise authorized in writing by Collateral Agent. Landlord irrevocably authorizes Tenant to make the foregoing payments to Collateral Agent upon such notice and demand.

(b) Tenant shall send a copy of any and all notices or statements under the Lease to Collateral Agent at the same time such notices or statements are sent to Landlord.

(c) This Agreement satisfies any and all conditions or requirements in the Lease relating to the granting of a non-disturbance agreement.

6. Collateral Agent to Receive Default Notices. Tenant shall notify

Collateral Agent of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Collateral Agent shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default or, if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. Estoppel. Tenant hereby certifies and represents to Collateral

Agent that as of the date of this Agreement:

(a) the Lease is in full force and effect;

(b) all requirements for the commencement and validity of the Lease have been satisfied and there are no unfulfilled conditions to Tenant's obligations under the Lease;

(c) Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease; to the best of Tenant's knowledge, Landlord is not in default under the Lease; no act, event or condition has occurred which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; no claim by Tenant of any nature exists against Landlord under the Lease; and all obligations of Landlord have been fully performed;

(d) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease;

(e) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one (1) month in advance;

(f) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Leased Premises;

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(g) the Lease has not been modified or amended and constitutes the entire agreement between Landlord and Tenant relating to the Leased Premises;

(h) Tenant has not assigned, mortgaged, sublet, encumbered, conveyed or otherwise transferred any or all of its interest under the Lease; and

(i) Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary action.

8. Notices. All notices or other written communications hereunder

shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days

after having been deposited in any post office or mail depository regularly maintained by the United States Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. Successors. The obligations and rights of the parties pursuant to

this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties; provided, however,

that in the event of the assignment or transfer of the interest of Collateral Agent, all obligations and liabilities of Collateral Agent under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Collateral Agent's interest is assigned or transferred; and provided, further, that the interest of Tenant under this

Agreement may not be assigned or transferred without the prior written consent of Collateral Agent. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different from the Landlord named in the Recitals.

10. Duplicate Original; Counterparts. This Agreement may be executed

in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

11. Limitation of Collateral Agent's Liability. (a) Collateral

Agent shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(b) In the event that Collateral Agent shall acquire title to the Leased Premises or the Property, Collateral Agent shall have no obligation, nor incur any liability, beyond Collateral Agent 's then equity interest, if any, in the Leased Premises, and Tenant shall look exclusively to such equity interest of Collateral Agent, if any, in the Leased Premises for the payment and discharge of any obligations imposed

upon Collateral Agent hereunder or under the Lease, and Collateral Agent is hereby released and relieved of any other obligations hereunder and under the Lease.

12. Modification in Writing. This Agreement may not be modified

except by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Lien of Security Instruments. Nothing contained in this

Agreement shall in any way impair or affect the lien created by the Security Instruments or the provisions thereof.

14. Compliance with Lease. Tenant agrees that in the event there is

any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease, the terms and provisions hereof shall be controlling.

15. Governing Law; Severability. This Agreement shall be governed by

the laws of the State of []. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Further Actions. Tenant agrees at its own expense to execute and

deliver, at any time and from time to time upon the request of Collateral Agent or any Acquiring Party, such documents and instruments (in recordable form, if requested) as may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to fully implement or to further evidence the

understandings and agreements contained in this Agreement. Moreover, Tenant hereby irrevocably appoints and constitutes Collateral Agent or any Acquiring Party as its true and lawful attorney-in-fact to execute and deliver any such documents or instruments which may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to implement or further evidence such understandings and agreements and which Tenant, after thirty (30) days' notice from Collateral Agent or any Acquiring Party, has failed to execute and deliver.

IN WITNESS WHEREOF, Collateral Agent and Tenant have duly executed this Agreement as of the date first above written.

CREDIT SUISSE FIRST BOSTON,

as Collateral Agent

By: _____
Name:
Title:

_____,
as Tenant

By: _____
Name:
Title:

The undersigned, as the Landlord named in the Recitals, having duly executed this Agreement as of the date first written above, and as mortgagor, pledgor, assignor or debtor under the Security Instruments, hereby accepts and agrees for itself and its successors and assigns, (i) to be bound by the provisions of Section 5 hereof, (ii) that nothing contained in the foregoing Agreement (x) shall in any way be deemed to constitute a waiver by Collateral Agent of any of its rights or remedies under the Security Instruments or (y) shall in any way be deemed to release Landlord from its obligations to comply with the terms, provisions, conditions, covenants and agreements set forth in the Security Instruments and (iii) that the provisions of the Security Instruments remain in full force and effect and must be complied with by Landlord.

_____, a

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York)
) ss.:
County of New York)

On the ___ day of _____ in the year ___ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature)

SCHEDULE A to EXHIBIT 1

Description of Real Property

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TERM LOAN AND REVOLVING CREDIT
MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING

TERM LOAN AND REVOLVING CREDIT MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), dated as of July

31, 2000, made by Mox-Med Inc., a Wisconsin corporation having an office at 2316
W. Wisconsin Street, Portage, WI, as mortgagor, assignor and debtor (in such
capacities and together with any successors in such capacities, the

"Mortgagor"), in favor of CREDIT SUISSE FIRST BOSTON, a bank organized under the

laws of Switzerland, acting through its New York branch ("CSFB"), having an
office at Eleven Madison Avenue, New York, New York 10010, in its capacity as
collateral agent for the lending institutions (the "Lenders") from time to time

party to the Credit Agreement (as hereinafter defined), as mortgagee, assignee
and secured party (CSFB, in such capacities and together with any successors in
such capacities, the "Mortgagee").

R E C I T A L S:

A. Pursuant to that certain credit agreement, dated as of July 31,
2000 (as amended, amended and restated, supplemented or otherwise modified from
time to time, the "Credit Agreement"), among Applied Power Inc. (doing business

as Actuant Corporation), a Wisconsin corporation (the "Borrower"), the Lenders,

CSFB, as swingline lender, an issuing bank, administrative agent and Collateral
Agent, First Union National Bank, as syndication agent and ING (U.S.) Capital
LLC, as documentation agent, the Lenders have agreed to make to or for the
account of the Borrower certain Loans (as hereinafter defined) and to issue
certain Letters of Credit (as hereinafter defined) for the account of the
Borrower.

B. It is contemplated that the Borrower and one or more of the
Subsidiary Guarantors may enter into one or more agreements (collectively, the
"Interest Rate Protection Agreements") with one or more of the Lenders or their

respective Affiliates (as hereinafter defined) fixing the interest rates with
respect to the Loans under the Credit Agreement.

C. The Borrower owns, directly or through its Subsidiaries (as
hereinafter defined), all of the issued and outstanding shares of the Mortgagor.

D. The Mortgagor has, pursuant to a certain subsidiary guarantee
agreement, dated as of July 31, 2000, among other things, guaranteed (the

"Subsidiary Guarantee") the obligations of the Borrower under the Credit

Agreement and the other Loan Documents (as hereinafter defined).

E. The Mortgagor will receive substantial benefits from the
execution, delivery and performance of the Loan Documents and is, therefore,
willing to enter into this Mortgage.

F. The Mortgagor will receive substantial benefits from the
execution, delivery and performance of the Loan Documents and is, therefore,
willing to enter into this Mortgage.

G. The Mortgagor is or will be the legal owner of the Mortgaged
Property (as hereinafter defined).

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H. It is a condition to the obligations of the Lenders to make the
Loans under the Credit Agreement and a condition to any Lender issuing Letters
of Credit under the Credit Agreement or entering into any Interest Rate
Protection Agreement that the Mortgagor execute and deliver the applicable Loan
Documents (as hereinafter defined), including this Mortgage.

I. This Mortgage is given by the Mortgagor in favor of the Mortgagee
for its benefit and the benefit of the Lenders (collectively, the "Secured

Parties") to secure the payment and performance of all of the Secured
- -----
Obligations (as hereinafter defined).

A G R E E M E N T:
- - - - -

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby covenants and agrees with the Mortgagee as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1 Definitions. Capitalized terms used but not otherwise

defined herein shall have the meanings assigned to such terms in the Credit Agreement. The following terms used in this Mortgage shall have the following meanings:

"ACM" shall have the meaning assigned to such term in Section 4.8(ii)

hereof.

"Affiliates" shall have the meaning assigned to such term in the

Credit Agreement.

"Allocated Indebtedness" shall have the meaning assigned to such term

in Section 14.20(i) hereof.

"Allocation Notice" shall have the meaning assigned to such term in

Section 14.20(i) hereof.

"Alteration" shall mean any and all additions, modifications or

changes, structural or nonstructural.

"Architect's Certificate" shall have the meaning assigned to such term

in Section 10.4(ii) hereof.

"Borrower" shall have the meaning assigned to such term in Recital A

hereof.

"Business Day" shall have the meaning assigned to such term in the

Credit Agreement.

"Charges" shall mean any and all real estate, property and other

taxes, assessments and special assessments, levies, fees, all water and sewer rents and charges and all other governmental charges imposed upon or assessed against, and all claims (including, without limitation, claims for labor, materials

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and supplies and other claims arising by operation of law) against, all or any portions of the Mortgaged Property.

"Collateral" shall have the meaning assigned to such term in Section

14.20(i) hereof.

"Collateral Account" shall have the meaning assigned to such term in

the Security Agreement.

"Commitments" shall have the meaning assigned to such term in the

Credit Agreement.

"Contested Liens" shall mean, collectively, any Liens incurred in

respect of any Charges to the extent that the amounts owing in respect thereof are not yet delinquent or are being contested and otherwise comply with the provisions of Section 9.1 hereof; provided, however, that such Liens shall in

all respects be subject and subordinate in priority to the Lien and security interest created and evidenced by this Mortgage, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien must be superior to the Lien and security interest created and evidenced hereby.

"Contracts" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all contracts and other general intangibles relating to the Mortgaged Property and all reserves, deferred payments, deposits, refunds and claims of every kind, nature or character relating thereto.

"Cost of Construction" shall mean the sum, so far as it relates to the

reconstructing, renewing, restoring or replacing of the Improvements, of (i) obligations incurred or assumed by the Mortgagor or undertaken by tenants pursuant to the terms of the Leases for labor, materials and other expenses and to contractors, builders and materialmen, (ii) the cost of contract bonds and of insurance of every kind, nature or character that would be deemed by a Prudent Operator to be necessary or appropriate during the course of construction, (iii) the expenses incurred or assumed by the Mortgagor for test borings, surveys, estimates, any Plans and Specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary for proper construction, (iv) ad valorem property taxes levied upon the Premises during performance of any Restoration and (v) any costs or other charges in connection with obtaining title insurance and counsel opinions that may be required or necessary in connection with a Restoration.

"Credit Agreement" shall have the meaning assigned to such term in

Recital A hereof.

"Default Rate" shall mean the rate per annum equal to the highest rate

then payable under the Credit Agreement.

"Destruction" shall mean any and all damage to, or loss or destruction

of, the Premises or any part thereof.

"Environmental Law" shall have the meaning assigned to such term in

the Credit Agreement.

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"Estimate" shall have the meaning assigned to such term in Section

10.4(ii)(D) hereof.

"Event of Default" shall have the meaning assigned to such term in the

Credit Agreement.

"Fixture" shall mean all machinery, apparatus, equipment, fittings,

fixtures, improvements and articles of personal property of every kind, description and nature whatsoever now or hereafter attached or affixed to the Land or any other Improvement or used in connection with the use and enjoyment of the Land or any other Improvement or the maintenance or preservation thereof, which by the nature of their location thereon or attachment thereto are fixtures under the UCC or any other applicable law including, without limitation, all utility systems, fire sprinkler and security systems, drainage facilities, lighting facilities, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, pipes, fittings and other items of every kind and description now or hereafter attached to or located on the Land which by the nature of their location thereon or attachment thereto are real property under applicable law, HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, water or lighting systems, power, sanitation, waste removal, elevators, maintenance or other systems or equipment.

"Full Replacement Cost" shall mean the Cost of Construction to replace

the Improvements, exclusive of depreciation, excavation, foundation and footings, as determined from time to time (but not less frequently than would be determined by a Prudent Operator or as otherwise requested by the Mortgagee) by

a Person selected by the Mortgagor and reasonably acceptable to the Mortgagee.

"GAAP" shall have the meaning assigned to such term in the Credit

Agreement.

"Governmental Authority" shall mean any Federal, state, local, foreign

or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board, bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court, tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Mortgagor or the Mortgaged Property or any portion thereof.

"Hazardous Materials" shall have the meaning assigned to such term in

the Credit Agreement.

"Improvements" shall mean all buildings, structures and other

improvements of every kind or description and any and all Alterations now or hereafter located, attached or erected on the Land including, without limitation (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements immediately upon delivery thereof on the Land and to be part of the improvements immediately upon their incorporation therein.

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"Indemnified Liabilities" shall have the meaning assigned to such term

in Section 14.6(i) hereof.

"Indemnitees" shall have the meaning assigned to such term in Section

14.6(i) hereof.

"Insurance Certificate" shall mean a certificate evidencing the

Insurance Requirements (i) in substantially the form commonly known as "ACORD 27" that (A) provides that the insurance has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the Insurance Policies, (B) provides an unequivocal obligation to give notice in advance to additional interest parties of termination and notification in advance of changes and (C) purports to convey all the privileges of the Insurance Policies to the certificate holders and (ii) that otherwise complies with the requirements with respect thereto set forth in Article VIII hereof.

"Insurance Policies" means the insurance policies and coverages

required to be maintained by the Mortgagor with respect to the Mortgaged Property pursuant to Article VIII hereof and all renewals and extensions thereof.

"Insurance Requirements" means, collectively, all provisions of the

Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon the Mortgagor and applicable to the Mortgaged Property or any use or condition thereof.

"Interest Rate Protection Agreements" shall have the meaning assigned

to such term in Recital B hereof.

"Land" shall mean the land described in Schedule A annexed to this

Mortgage, together with all of the Mortgagor's reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way

belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto.

"Landlord" shall mean any landlord, lessor, franchisor, licensor or grantor, as applicable.

"Leases" shall mean, collectively, any and all interests of the Mortgagor, as Landlord, in all leases and subleases of space, tenancies, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, relating in any manner to the Premises and any and all amendments, modifications, supplements, replacements, extensions and renewals if any thereof, whether now in effect or hereafter coming into effect.

"Lenders" shall have the meaning assigned to such term in the Preamble hereof.

"Letters of Credit" shall have the meaning assigned to such term in the Credit Agreement.

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"Liability Insurance" shall mean, collectively, the insurance policies and coverages described in clauses (ii) and, to the extent applicable, (vi) and (vii) of Section 8.1 hereof.

"Lien" shall have the meaning assigned to such term in the Credit Agreement.

"Loan Documents" shall have the meaning assigned to such term in the Credit Agreement.

"Loan Parties" shall have the meaning assigned to such term in the Credit Agreement.

"Loans" shall have the meaning assigned to such term in the Credit Agreement.

"Material Adverse Effect" shall mean (a) a materially adverse effect on the business, property, results of operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Mortgagor to perform any of its obligations under this Mortgage or (c) material impairment of the rights of or benefits or remedies available to the Mortgagee under this Mortgage including, without limitation, any material impairment of the value or utility of the Mortgaged Property or the Lien of this Mortgage.

"Mortgage" shall have the meaning assigned to such term in the Preamble hereof.

"Mortgaged Property" shall have the meaning assigned to such term in Section 2.1 hereof.

"Mortgagee" shall have the meaning assigned to such term in the Preamble hereof.

"Mortgagor" shall have the meaning assigned to such term in the Preamble hereof.

"Mortgagor's Interest" shall have the meaning assigned to such term in Section 2.2 hereof.

"Net Cash Proceeds" shall have the meaning assigned to such term in the Credit Agreement.

"Net Condemnation Award" shall have the meaning assigned to such term

in Section 10.2 hereof.

"Net Insurance Proceeds" shall have the meaning assigned to such term

in Section 10.1 hereof.

"Officers' Certificate" shall mean, as applied to any corporation, a

certificate executed on behalf of such corporation by its Chairman of the Board (if an officer) or its Chief Executive Officer or one of its Vice Presidents (or an equivalent officer) or by its Chief Financial Officer, Vice President-Finance or its Treasurer (or an equivalent officer) or any Assistant Treasurer in their official (and not individual) capacities; provided, however, that every

Officers' Certificate with respect to the compliance with a condition precedent to the making of any Loan or the taking of any other action hereunder shall include

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(i) a statement that the officers making or giving such Officers' Certificate have read such condition and any definitions or other provisions contained in this Agreement relating thereto, and (ii) a statement as to whether, in the opinion of the signers, such condition has been complied with.

"Permit" shall mean any and all permits, certificates, approvals,

authorizations, consents, licenses, variances, franchises or other instruments, however characterized, of any Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held, together with all amendments, modifications, extensions, renewals and replacements of any thereof issued or in any way furnished in connection with the Mortgaged Property including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation.

"Permitted Collateral Liens" shall have the meaning assigned to such

term in Section 4.7(v) hereof.

"Permitted Liens" shall have the meaning assigned to such term in the

Credit Agreement.

"Person" shall have the meaning assigned to such term in the Credit

Agreement.

"Plans and Specifications" shall have the meaning assigned to such

term in Section 10.4(i) hereof.

"Premises" shall mean, collectively, the Land and the Improvements.

"Prior Liens" shall mean, collectively, the Liens identified in

Schedule B annexed to this Mortgage.

"Proceeds" shall mean, collectively, any and all (i) proceeds of the

conversion, voluntary or involuntary, of any of the Mortgaged Property or any portion thereof into cash or liquidated claims, (ii) proceeds of any insurance (except payments made to a Person which is not a party to this Mortgage), indemnity, warranty, guaranty or claim payable to the Mortgagee or to the Mortgagor from time to time with respect to any of the Mortgaged Property including, without limitation, all Net Insurance Proceeds, (iii) payments (in any form whatsoever) made or due and payable to the Mortgagor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any portion of the Mortgaged Property by any Governmental Authority (or any Person acting on behalf of a Governmental Authority) including, without limitation, all Net Condemnation Awards, (iv) products of the Mortgaged Property and (v) other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property including, without limitation, refunds of real estate taxes and assessments, including interest thereon.

"Property Insurance" shall mean, collectively, the insurance policies

and coverages described in clauses (i), (iii), (iv), (v) and, to the extent applicable, (vii) of Section 8.1 hereof.

"Prudent Operator" shall mean a prudent operator of property similar

in use and configuration to the Premises and located in the locality where the Premises are located.

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"Real Property Officers' Certificate" shall mean the Officers'

Certificate delivered pursuant to Section 4.02(h) (12) of the Credit Agreement.

"Records" shall mean, collectively, any and all right, title and

interest of the Mortgagor in and to any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the Mortgaged Property or the construction of any Alteration or the maintenance of any Permit.

"Remedial Action" shall have the meaning assigned to such term in the

Credit Agreement.

"Rental Value" shall mean the sum of (x) the total estimated gross

rental income from tenant occupation of the Improvements as furnished and equipped under Leases and (y) the total amount of all other Charges which are the legal obligation of the Tenants of the Premises under Leases.

"Rents" shall mean, collectively, any and all rents, additional rents,

royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Lease to secure performance of the Tenant's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Mortgagor under any Lease or otherwise, and any award in the event of the bankruptcy of any Tenant under or guarantor of a Lease.

"Requirements of Law" shall mean, collectively, any and all

requirements of any Governmental Authority including, without limitation, any and all orders, decrees, determinations, laws, treaties, ordinances, rules, regulations or similar statutes or case law.

"Restoration" shall have the meaning assigned to such term in Section

10.3 hereof.

"Restoration Commitment" shall have the meaning assigned to such term

in Section 10.4(iii) hereof.

"Restoration Election Notice" shall have the meaning assigned to such

term in Section 10.3 hereof.

"Restoration Letter of Credit" shall have the meaning assigned to such

term in Section 10.4(iii) hereof.

"Secured Obligations" shall mean all obligations (whether or not

constituting future advances, obligatory or otherwise) of the Borrower and any and all of the other Loan Parties from time to time arising under or in respect hereof, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents (including, without limitation, the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Mortgage, the Credit Agreement, the Interest Rate Protection Agreements and the other Loan Documents), in each case whether (i) such obligations are

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direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due whether at stated maturity, by acceleration or otherwise, (ii) arising in the regular course of business or otherwise, (iii) for payment or performance and/or (iv) now existing or hereafter arising (including, without limitation, interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to any Loan Party or any other Person, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding).

"Secured Parties" shall have the meaning assigned to such term in

Recital H hereof.

"Security Agreement" shall have the meaning assigned to such term in

the Credit Agreement.

"Security Documents" shall have the meaning assigned to such term in

the Credit Agreement.

"Subordination Agreement" shall mean a subordination, nondisturbance

and attornment agreement substantially in the form of Exhibit 1 annexed to this Mortgage.

"Subsidiaries" shall have the meaning assigned to such term in the

Credit Agreement.

"Subsidiary Guarantee" shall have the meaning assigned to such term in

Recital D hereof.

"Subsidiary Guarantors" shall have the meaning assigned to such term

in the Credit Agreement.

"Taking" shall mean any taking of the Mortgaged Property or any part

thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part thereof, by any Governmental Authority, civil or military.

"Tax Escrow Fund" shall have the meaning assigned to such term in

Section 7.2 hereof.

"Tenant" shall mean any tenant, lessee, sublessee, franchisee,

licensee, grantee or obligee, as applicable.

"UCC" shall mean the Uniform Commercial Code as in effect on the date

hereof in the jurisdiction in which the Premises are located; provided, however,

that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any item or portion of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the jurisdiction in which the Premises are located, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

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SECTION 1.2 Interpretation. In this Mortgage, unless otherwise

specified, (i) singular words include the plural and plural words include the singular, (ii) words importing any gender include the other gender, (iii) references to any Person include such Person's successors and assigns and in the case of an individual, the word "successors" includes such Person's heirs, devisees, legatees, executors, administrators and personal representatives, (iv) references to any statute or other law include all applicable rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, consolidating or replacing the statute or law referred to, (v) the words "consent," "approve" and "agree," and derivations thereof or words of similar import, mean the prior written consent, approval or agreement of the Person in

question, (vi) the words "include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation," (vii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import, refer to this Mortgage in its entirety, (viii) references to Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are to the Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses hereof, (ix) the Schedules and Exhibits to this Mortgage, in each case as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, are incorporated herein by reference, (x) the titles and headings of Articles, Sections, Schedules, Exhibits, subsections, paragraphs and clauses are inserted as a matter of convenience only and shall not affect the constructions of any provisions hereof and (xi) all obligations of the Mortgagor hereunder shall be satisfied by the Mortgagor at the Mortgagor's sole cost and expense.

SECTION 1.3 Resolution of Drafting Ambiguities. The Mortgagor

acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., Mortgagee) shall not be employed in the interpretation

hereof.

ARTICLE II

GRANTS AND SECURED OBLIGATIONS

SECTION 2.1 Grant of Mortgaged Property. The Mortgagor hereby grants,

mortgages, bargains, sells, assigns and conveys to the Mortgagee, and hereby grants to the Mortgagee, a mortgage lien and security interest in and upon, all of the Mortgagor's estate, right, title and interest in, to and under the following property, whether now owned or held or hereafter acquired from time to time (collectively, the "Mortgaged Property"):

- (i) Land;
- (ii) Improvements;
- (iii) Leases;
- (iv) Rents;
- (v) Permits;
- (vi) Contracts;
- (vii) Records; and
- (viii) Proceeds;

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TO HAVE AND TO HOLD the Mortgaged Property, together with all estate, right, title and interest of the Mortgagor and anyone claiming by, through or under the Mortgagor in and to the Mortgaged Property and all rights and appurtenances relating thereto, unto the Mortgagee, its successors and assigns, for the purpose of securing the payment and performance in full of all the Secured Obligations.

SECTION 2.2 Assignment of Leases and Rents. As additional security

for the payment and performance in full of all the Secured Obligations and subject to the provisions of Article VI hereof, the Mortgagor absolutely,

presently, unconditionally and irrevocably assigns, transfers and sets over to the Mortgagee, and grants to the Mortgagee, all of the Mortgagor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Leases including, without limitation, the following (such assigned rights, the "Mortgagor's Interest"):

- (i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Leases;
- (ii) all claims, rights, powers, privileges and remedies of the Mortgagor, whether provided for in the Leases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants to perform or comply with any term of the Leases;
- (iii) all rights to take all actions upon the happening of a default

under the Leases as shall be permitted by the Leases or by law including, without limitation, the commencement, conduct and consummation of proceeding at law or in equity; and

(iv) the full power and authority, in the name of the Mortgagor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Mortgagor, as Landlord, is or may be entitled to take under the Leases.

SECTION 2.3 Secured Obligations. This Mortgage secures, and the

Mortgaged Property is collateral security for, the payment and performance in full when due of the Secured Obligations.

SECTION 2.4 Future Advances. This Mortgage shall secure future

advances. The maximum aggregate amount of all advances of principal under the Credit Agreement (which advances are obligatory to the extent the conditions set forth in the Credit Agreement relating thereto are satisfied) that may be outstanding hereunder at any time is \$430,000,000, plus interest thereon, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Mortgagee by reason of any default by the Mortgagor under the terms hereof, together with all other sums secured hereby.

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SECTION 2.5 No Release. Nothing set forth in this Mortgage shall

relieve the Mortgagor from the performance of any term, covenant, condition or agreement on the Mortgagor's part to be performed or observed under or in respect of any of the Mortgaged Property or from any liability to any Person under or in respect of any of the Mortgaged Property or shall impose any obligation on the Mortgagee or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Mortgagor's part to be so performed or observed or shall impose any liability on the Mortgagee or any other Secured Party for any act or omission on the part of the Mortgagor relating thereto or for any breach of any representation or warranty on the part of the Mortgagor contained in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document, or under or in respect of the Mortgaged Property or made in connection herewith or therewith. The obligations of the Mortgagor contained in this Section 2.5 shall survive the termination hereof and

the discharge of the Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

SECTION 3.1 Authority and Validity.

The Mortgagor represents and warrants that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(ii) it is duly qualified to transact business and is in good standing in the state in which the Mortgaged Property is located;

(iii) it has full organizational power and lawful authority to execute and deliver this Mortgage and to mortgage and grant a Lien on and security interest in the Mortgaged Property and otherwise assign the Mortgagor's Interest and otherwise perform its obligations as contemplated herein, and all corporate and governmental actions, consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained; and

(iv) this Mortgage is a legal, valid and binding obligation of the Mortgagor, enforceable against the Mortgagor in accordance with its terms.

SECTION 3.2 Warranty of Title. The Mortgagor represents and warrants

that:

(i) it has good and marketable fee simple title to the Premises and the Landlord's interest and estate under or in respect of the Leases and good title to the interest it purports to own or hold in and to each of the Permits, the Contracts and the Records, in each case subject to no Liens, except for Prior Liens;

(ii) it has good title to the interest it purports to own or hold in

and to all rights and appurtenances to or that constitute a portion of the Mortgaged Property;

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(iii) it is in compliance with each term, condition and provision of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property; and

(iv) this Mortgage creates and constitutes a valid and enforceable first priority Lien on the Mortgaged Property, and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Fixtures, which first priority Lien and first priority security interest are subject only to Prior Liens.

SECTION 3.3 Condition of Mortgaged Property. The Mortgagor represents

and warrants that:

(i) there has been issued and there remains in full force and effect subject to no revocation, suspension, forfeiture or modification, each and every Permit necessary for the present and contemplated use, operation and occupancy of the Premises by the Mortgagor and its Tenants and the conduct of their respective businesses and all required zoning, building code, land use, environmental and other similar Permits, except to the extent that such failure, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) the Premises and the present and contemplated use and occupancy thereof comply with all applicable zoning ordinances, building codes, land use laws, set back or other development and use requirements of Governmental Authorities, except to the extent that such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(iii) the Premises are served by all utilities (including, without limitation, public water and sewer systems) necessary for the present and contemplated use thereof, and all utility services are provided by public utilities and the Premises have accepted or are equipped to accept such utility services and the Mortgagor has not received notice of termination of such utility service;

(iv) all public roads and streets necessary for service of and access to the Premises for the present and contemplated use thereof have been completed and have been dedicated and accepted as such by the appropriate Governmental Authorities;

(v) the Mortgagor has access to the Premises from public roads and, to the extent applicable, public or private rail or waterway, sufficient to allow the Mortgagor and its Tenants and invitees to conduct their respective businesses at the Premises in accordance with sound commercial practices and the Mortgagor has not received notice of termination of such access;

(vi) the Mortgagor has not received notice of any Taking or the commencement or pendency of any action or proceeding therefor;

(vii) there has not occurred any Destruction of the Premises or any portion thereof as a result of any fire or other casualty which as of the date hereof has not been restored;

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(viii) there are no disputes regarding boundary lines, location, encroachments or possession of any portions of the Mortgaged Property and, to the best knowledge of the Mortgagor after due and diligent inquiry, no state of facts exists which could give rise to any such claim;

(ix) all liquid and solid waste disposal, septic and sewer systems located on the Premises are in a good and safe condition and repair and in compliance with all Requirements of Law, except to the extent that such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(x) no portion of the Premises is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Premises is located within such area, the Mortgagor has obtained the insurance prescribed in Article VIII hereof;

(xi) the Premises are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a portion of such lot or lots, and no

other land or improvements is assessed and taxed together with the Premises or any portion thereof; and

(xii) there are no options or rights of first refusal to purchase or acquire all or any portion of the Mortgaged Property.

SECTION 3.4 Leases. The Mortgagor represents and warrants that:

(i) the Leases identified in the Real Property Officers' Certificate are the only Leases in existence on the date hereof with respect to the Premises;

(ii) true copies of such Leases have been previously delivered to the Mortgagee and there are no agreements with any Tenant under such Leases other than those agreements expressly set forth therein;

(iii) the Mortgagor is the sole owner of all of the Mortgagor's Interest in such Leases;

(iv) each of such Leases is in full force and effect, constitutes a legal, valid and binding obligation of the Mortgagor and the applicable Tenant thereunder, and is enforceable against the Mortgagor and such Tenant in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws of general application affecting the enforcement of creditor's rights;

(v) there is no default by Mortgagor or, to the best of Mortgagor's knowledge, by any Tenant, under any of such Leases and there is existing no condition which with the giving of notice or passage of time or both would cause a default thereunder;

(vi) all Rents due under such Leases have been paid in full;

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(vii) none of the Rents reserved under such Leases have been assigned or otherwise pledged or hypothecated except in favor of the Mortgagee pursuant to the provisions hereof;

(viii) none of the Rents (other than any security deposit collected in accordance with the provisions of the applicable Lease) have been collected for more than one (1) month in advance;

(ix) there exists no offsets or defenses to the payment of any portion of the Rents and the Mortgagor owes no monetary obligation to any Tenant under any such Lease;

(x) the Mortgagor has received no notice from any Tenant challenging the validity or enforceability of any such Lease;

(xi) no such Lease contains any option to purchase, right of first refusal to purchase, right of first refusal to relet, or any other similar provision; and

(xii) each such Lease is subordinate to this Mortgage either pursuant to its terms or pursuant to a recordable Subordination Agreement.

SECTION 3.5 Insurance. The Mortgagor represents and warrants that

(i) the Premises and the use, occupancy and operation thereof comply in all material respects with all Insurance Requirements and, to the best knowledge of the Mortgagor after due and diligent inquiry, there exists no default under any Insurance Requirement which could reasonably be expected to have a Material Adverse Effect, (ii) all premiums due and payable with respect to the Insurance Policies have been paid and (iii) all Insurance Policies are in full force and effect and the Mortgagor has not received notice of violation or cancellation thereof.

SECTION 3.6 Charges. The Mortgagor represents and warrants that

all Charges imposed upon or assessed against the Mortgaged Property have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable.

SECTION 3.7 Environmental. Except as set forth in Schedule 3.17 to

the Credit Agreement, the Mortgagor represents and warrants that:

(i) it has obtained all Permits which are necessary with respect to the ownership and operation of its business and the Mortgaged Property under any and all applicable Environmental Laws and is in compliance with all terms and conditions thereof, except to the extent that such noncompliance or failure to obtain any necessary permits, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) it is in compliance with any and all applicable Environmental Laws including, without limitation, all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws, except to the extent that such noncompliance, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

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(iii) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice of demand letter pending or threatened against it or any Affiliate under the Environmental Laws which could result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect; and

(iv) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may prevent compliance with the Environmental Laws, or which could reasonably be expected to give rise to any common law or legal liability including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other Environmental Law or related common law theory or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing or notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials which could reasonably be expected to result in a fine, penalty or other cost or expense which, in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.8 No Conflicts, Consents, etc. Neither the execution and

delivery hereof by the Mortgagor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Mortgagor is a party, or by which it may be bound or to which any of its properties or assets may be subject, which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (ii) conflicts with any Requirement of Law applicable to the Mortgagor or its property or (iii) results in or requires the creation or imposition of any Lien (other than the Lien contemplated hereby) upon or with respect to any of the Mortgaged Property. No consent of any party (including, without limitation, equityholders or creditors of the Mortgagor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required for (i) the granting of a mortgage Lien on and security interest in the Mortgaged Property by the Mortgagor granted by it pursuant to this Mortgage or for the execution, delivery or performance hereof by the Mortgagor except as set forth in the Real Property Officers' Certificate, except for applicable recording and filing requirements, or (ii) the exercise by the Mortgagee of the remedies in respect of the Mortgaged Property pursuant to this Mortgage.

ARTICLE IV

CERTAIN COVENANTS OF MORTGAGOR

SECTION 4.1 Payment. The Mortgagor shall pay as and when the same

shall become due, whether at its stated maturity, by acceleration or otherwise, each and every amount payable by the Mortgagor under the Loan Documents and any Interest Rate Protection Agreements.

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SECTION 4.2 Preservation of Corporate Existence. The Mortgagor

shall:

(i) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization;

(ii) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Mortgaged Property is located; and

(iii) preserve and maintain in full force and effect all consents, authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof.

SECTION 4.3 Title. The Mortgagor shall:

(i) (A) keep in effect all rights and appurtenances to or that constitute a part of the Mortgaged Property and (B) protect, preserve and defend its interest in the Mortgaged Property and title thereto;

(ii) (A) comply with each of the terms, conditions and provisions of any obligation of the Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property, (B) forever warrant and defend to the Mortgagee the Lien and security interests created and evidenced hereby and the validity and priority hereof in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Mortgaged Property or any of the rights of the Mortgagee hereunder and (C) maintain a valid and enforceable first priority Lien on the Mortgaged Property and, to the extent any of the Mortgaged Property shall consist of Fixtures, a first priority security interest in the Mortgaged Property, which first priority Lien and security interest shall be subject only to Permitted Collateral Liens; and

(iii) immediately upon obtaining knowledge of the pendency of any proceedings for the eviction of the Mortgagor from the Mortgaged Property or any part thereof by paramount title or otherwise questioning the Mortgagor's right, title and interest in, to and under the Mortgaged Property as warranted in this Mortgage, or of any condition that could give rise to any such proceedings, notify the Mortgagee thereof. The Mortgagee may participate in such proceedings and the Mortgagor will deliver or cause to be delivered to the Mortgagee all instruments requested by the Mortgagee to permit such participation. In any such proceedings, the Mortgagee may be represented by counsel selected by Mortgagor reasonably satisfactory to the Mortgagee at the expense of the Mortgagor. If, upon the resolution of such proceedings, the Mortgagor shall suffer a loss of the Mortgaged Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to the Mortgagee to be applied as Net Cash Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(g) of the Credit Agreement.

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SECTION 4.4 Maintenance and Use of Mortgaged Property; Alterations.

(i) Maintenance. The Mortgagor shall cause the representations and warranties set forth in Section 3.3 hereof to continue to be true in each and every respect and shall pay or cause to be paid when due all Charges, costs and expenses relating thereto.

(ii) Maintenance of Premises. The Mortgagor shall not commit or suffer any waste on the Premises. The Mortgagor shall, at all times, maintain the Premises in good, safe and insurable operating order, condition and repair, reasonable wear and tear excepted, and shall as quickly as practicable make or cause to be made all repairs, structural or nonstructural, which are necessary or appropriate in the conduct of the Mortgagor's business. The Mortgagor shall (A) not, except as permitted in Section 4.4(iii) hereof, alter the occupancy or use of all or any portion of the Premises without the prior written consent of the Mortgagee and (B) take all other actions which from the character or use of the Premises may be necessary or appropriate to maintain and preserve its value. Except to the extent permitted pursuant to the provisions of Section 4.4(iii) hereof, the Mortgagor shall not remove, demolish or alter the design or structural character of any Improvement now or hereafter erected upon all or any portion of the Premises, or permit any such removal, demolition or alteration, without the prior written consent of the Mortgagee.

(iii) Alterations. The Mortgagor shall not, without the prior written consent of the Mortgagee (which consent shall not be unreasonably withheld), make any Alteration to the Premises that, in each instance, costs more to effect than \$250,000 or which, during any calendar year, in the aggregate, cost more than \$1,000,000 to effect. No prior written consent of the Mortgagee shall be required for any Alteration to the Premises that, in each instance, costs less than \$250,000 to effect or which, during any calendar year, in the aggregate, do not cost more than \$1,000,000 to effect. Whether or not the making of any Alteration shall require the consent of the Mortgagee pursuant to the immediately preceding sentence, the Mortgagor shall (A) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements and (B) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of Article X

hereof.

(iv) Permits. The Mortgagor shall maintain, or cause to be

maintained, in full force and effect all Permits contemplated by Section 3.3(i)

hereof. Unless and to the extent contested by the Mortgagor in accordance with
the provisions of Article X hereof, the Mortgagor shall comply with all

requirements set forth in the Permits and all Requirements of Law applicable to
all or any portion of the Mortgaged Property or the condition, use or occupancy
of all or any portion thereof or any recorded deed of restriction, declaration,
covenant running with the land or otherwise, now or hereafter in force.

(v) Zoning. The Mortgagor shall not initiate, join in, or consent

to any change in the zoning or any other permitted use classification of the
Premises without the prior written consent of the Mortgagee.

SECTION 4.5 Notices Regarding Certain Defaults. The Mortgagor

shall, promptly upon receipt of any written notice regarding (i) any default by
the Mortgagor relating to the Mortgaged Property or any portion thereof or (ii)
the failure to discharge any of Mortgagor's obligations with respect to the
Mortgaged Property or any portion thereof described herein, furnish a copy of
such notice to the Mortgagee.

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SECTION 4.6 Access to Mortgaged Property, Books and Records; Other

Information. Upon reasonable prior notice and request to the Mortgagor, the

Mortgagee, its agents, accountants and attorneys shall have full and free access
to visit and inspect, as applicable, during normal business hours and such other
reasonable time as may be reasonably requested by the Mortgagee to all of the
Mortgaged Property including, without limitation, all of the books,
correspondence and records of the Mortgagor relating thereto. The Mortgagee and
its representatives may examine the same, take extracts therefrom and make
photocopies thereof, and the Mortgagor agrees to render to the Mortgagee at the
Mortgagor's cost and expense, such clerical and other assistance as may be
requested by the Mortgagee with regard thereto. The Mortgagor shall, at any and
all times, within a reasonable time after written request by the Mortgagee,
furnish or cause to be furnished to the Mortgagee, in such manner and in such
detail as may be reasonably requested by the Mortgagee, additional information
with respect to the Mortgaged Property.

SECTION 4.7 Limitation on Liens; Transfer Restrictions. Except as

permitted pursuant to the Credit Agreement, the Mortgagor may not, without the
prior written consent of the Mortgagee, further mortgage, encumber, hypothecate,
sell, convey or assign all or any part of the Mortgaged Property or suffer or
allow any of the foregoing to occur by operation of law or otherwise; provided,

however, that so long as no Event of Default shall have occurred and be

continuing, the Mortgagor shall have the right to suffer to exist the following
Liens in respect of the Mortgaged Property: (i) Prior Liens (but not extensions,
amendments, supplements or replacements of Prior Liens unless consented to by
the Mortgagee), (ii) the Lien and security interest created by this Mortgage,
(iii) Contested Liens, (iv) Liens of the kind and nature described in clause (f)
of the definition of Permitted Liens and (v) Leases to the extent permitted
pursuant to the provisions of Article V hereof (the Liens described in clauses

(i) through (v) of this sentence, collectively, "Permitted Collateral Liens").

SECTION 4.8 Environmental.

(i) Hazardous Materials. The Mortgagor shall (A) comply with any and

all present and future Environmental Laws except where the failure to comply
could not reasonably be expected to have a Material Adverse Effect, (B) not
release, store, treat, handle, generate, discharge or dispose of any Hazardous
Materials on, under or from the Mortgaged Property in violation of (which
violation could reasonably be expected to have a Material Adverse Effect) or in
a manner that could result in any material liability under any present and
future Environmental Law and (C) take all necessary steps to initiate and
expeditiously complete all remedial, corrective and other action to eliminate
any such effect, provided, however, that Mortgagor shall not be required to

undertake any Remedial Action required by Environmental Laws to the extent that
its obligation to do so is being contested in good faith and by proper
proceedings and appropriate reserves are being maintained with respect to such

circumstances in accordance with GAAP. In the event the Mortgagor fails to comply with the covenants in the preceding sentence, the Mortgagee may, in addition to any other remedies set forth herein, as agent for and at the Mortgagor's sole cost and expense, cause any necessary remediation, removal or response action relating to Hazardous Materials to be taken to achieve compliance with such covenants and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and shall bear interest at the Default Rate. The Mortgagee shall have the right to have an environmental report prepared as provided in Section 5.10 of the Credit Agreement. The

Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage or expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements

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and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain by reason of the assertion against the Mortgagee or such Lender by any party of any claim relating to such Hazardous Materials referred to in clause (i) (B) of this Section 4.8 on, under or from the Mortgaged Property or actions

taken with respect thereto as authorized hereunder. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof; and

(ii) Asbestos. The Mortgagor shall not install nor permit to be

installed in or removed from the Mortgaged Property, asbestos or any asbestos-containing material (collectively, "ACM") except in compliance with all

applicable Environmental Laws, and with respect to any ACM currently present in the Mortgaged Property, the Mortgagor shall promptly either (A) remove any ACM which such Environmental Laws require to be removed or (B) otherwise comply with such Environmental Laws with respect to such ACM, all at the Mortgagor's sole cost and expense. If the Mortgagor shall fail so to remove any ACM or otherwise comply with such laws or regulations, the Mortgagee may, in addition to any other remedies set forth herein, take reasonable or necessary steps to eliminate such ACM from the Mortgaged Property or otherwise comply with applicable law, regulations or orders and the Mortgagor shall provide to the Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. Any reasonable costs or expenses incurred by the Mortgagee for such purpose shall be immediately due and payable by the Mortgagor and bear interest at the Default Rate. The Mortgagor shall indemnify and hold the Mortgagee and each Lender harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' and consultants' fees and disbursements and the allocated costs of staff counsel) that the Mortgagee or such Lender may sustain, by reason of the assertion against the Mortgagee or such Lender by any third party of a claim as a result of the presence of any ACM and any removal thereof to the extent required by applicable Environmental Laws or compliance with all applicable Environmental Laws. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment hereof.

SECTION 4.9 Estoppel Certificates. The Mortgagor shall, from time

to time, upon ten (10) Business Days' prior written request of the Mortgagee, execute, acknowledge and deliver to the Mortgagee an Officers' Certificate stating that this Mortgage, the Credit Agreement, each Interest Rate Protection Agreement and the other Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that this Mortgage, the Credit Agreement, such Interest Rate Protection Agreement or such other Loan Document, as applicable, is in full force and effect as modified and setting forth such modifications) and stating the date to which principal and interest have been paid on the Loans.

ARTICLE V

LEASES

SECTION 5.1 Mortgagor's Affirmative Covenants with Respect to Leases.

With respect to each Lease, the Mortgagor shall:

(i) observe and perform all the obligations imposed upon the Landlord under such Lease;

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(ii) promptly send copies to the Mortgagee of all notices of default which the Mortgagor shall send or receive thereunder; and

(iii) enforce in a commercially reasonable manner all of the material terms, covenants and conditions contained in such Lease upon the

part of the Tenant thereunder to be observed or performed.

SECTION 5.2 Mortgagor's Negative Covenants with Respect to Leases.

With respect to each Lease, the Mortgagor shall not, without the prior written consent of the Mortgagee:

(i) receive or collect, or permit the receipt or collection of, any Rent under such Lease more than one (1) month in advance of the respective period in respect of which such Rent is to accrue, except:

- (A) in connection with the execution and delivery of such Lease (or of any amendment to such Lease), Rent thereunder may be collected and received in advance in an amount not in excess of one (1) month's Rent;
- (B) the amount held by Landlord as a reasonable security deposit thereunder; and
- (C) any amount received and collected for escalation and other charges in accordance with the terms of such Lease;

(ii) assign, transfer or hypothecate (other than to the Mortgagee hereunder) any Rent under such Lease whether then due or to accrue in the future or the interest of the Mortgagor as Landlord under such Lease;

(iii) enter into any amendment or modification of such Lease which would reduce the unexpired term thereof or decrease the amount of the Rents payable thereunder or impair the value or utility of the Mortgaged Property or the security provided by this Mortgage;

(iv) terminate (whether by exercising any contractual right of the Mortgagor to recapture leased space or otherwise) or permit the termination of such Lease or accept surrender of all or any portion of the space demised under such Lease prior to the end of the term thereof or accept assignment of such Lease to the Mortgagor unless:

- (A) the Tenant under such Lease has not paid the equivalent of two (2) months' Rent and the Mortgagor has made reasonable efforts to collect such Rent; or
- (B) the Mortgagor shall deliver to the Mortgagee an Officers' Certificate to the effect that the Mortgagor has entered into a new Lease (or Leases) for the space covered by the terminated or assigned Lease with a term (or terms) which expire(s) no earlier than the date on which the terminated or assigned Lease was to expire (excluding renewal options), and with a Tenant(s) having a creditworthiness (as reasonably determined by the Mortgagor) suffi-

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cient to pay the Rent due under the new Lease (or Leases), and the tenant(s) shall have commenced paying rent, including all operating expenses and other amounts payable under the new Lease (or Leases) without any abatement or concession; or

- (C) the Mortgagor or a subsidiary desires to use the space leased for its own purposes; or

(v) waive, excuse, condone or in any manner discharge or release any Tenants of or from the obligations of such Tenants under their respective Leases or guarantors of Tenants from obligations under any guarantees of the Leases except as the same would be done by a Prudent Operator with due regard for the security afforded the Mortgagee thereby.

SECTION 5.3 Additional Requirements with Respect to New Leases. In

addition to the requirements of Sections 5.1 and 5.2 hereof, the Mortgagor shall

not enter into any Lease after the date hereof unless the Tenant under such Lease has entered into a Subordination Agreement.

ARTICLE VI

CONCERNING ASSIGNMENT OF LEASES AND RENTS

SECTION 6.1 License to the Mortgagor. The Mortgagee hereby grants

to the Mortgagor a license to collect and apply the Rents and to enforce the obligations of Tenants under the Leases. Immediately upon the occurrence and during the continuance of any Event of Default, the license granted in the immediately preceding sentence shall cease and terminate, with or without any notice, action or proceeding or the intervention of a receiver appointed by a

court.

SECTION 6.2 Collection of Rents by the Mortgagee.

(i) Any Rents receivable by the Mortgagee hereunder, after payment of all proper costs and charges, shall be applied to the Secured Obligations. The Mortgagee shall be accountable to the Mortgagor only for Rents actually received by the Mortgagee. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

(ii) The Mortgagor hereby authorizes Tenant under each Lease to rely upon and comply with any and all notices or demands from the Mortgagee for payment of Rents to the Mortgagee and the Mortgagor shall have no claim against Tenant for Rents paid by Tenant to the Mortgagee pursuant to such notice or demand.

SECTION 6.3 No Release. Neither this Mortgage nor any action or

inaction on the part of the Mortgagee shall release Tenant under any Lease, any guarantor of any Lease or the Mortgagor from any of their respective obligations under such Leases or constitute an assumption of any such obligation on the part of the Mortgagee. No action or failure to act on the part of the Mortgagor shall adversely affect or limit the rights of the Mortgagee under this Mortgage or, through this Mortgage, under such

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Leases. Nothing contained herein shall operate or be construed to (i) obligate the Mortgagee to perform any of the terms, covenants or conditions contained in any Lease or otherwise to impose any obligation upon the Mortgagee with respect to such Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in such Lease in the event that Tenant under such Lease shall have been joined as a party defendant in any action by which the estate of such Tenant shall be terminated) or (ii) place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Premises.

SECTION 6.4 Irrevocable Interest. All rights, powers and

privileges of the Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and the Mortgagor shall not take any action under the Leases or otherwise which is inconsistent with this Mortgage or any of the terms hereof and any such action inconsistent herewith or therewith shall be void.

SECTION 6.5 Amendment to Leases. Each Lease, including, without

limitation, all amendments, modifications, supplements, replacements, extensions and renewals thereof, shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

ARTICLE VII

TAXES AND CERTAIN STATUTORY LIENS

SECTION 7.1 Payment of Charges. Unless and to the extent contested

by the Mortgagor in accordance with the provisions of Article IX hereof, the Mortgagor shall pay and discharge, or cause to be paid and discharged, from time to time when the same shall become due, all Charges. The Mortgagor shall, upon the Mortgagee's request, deliver to the Mortgagee receipts evidencing the payment of all such Charges.

SECTION 7.2 Escrow of Taxes. From and after the occurrence of an

Event of Default, at the option and upon the request of the Mortgagee, the Mortgagor shall deposit with the Mortgagee in an account maintained by the Mortgagee (the "Tax Escrow Fund"), on the first day of each month, an amount estimated by the Mortgagee to be equal to one-twelfth of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under Section 7.1 hereof. Such amounts shall be held by the Mortgagee

without interest to the Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such priority as the Mortgagee shall determine, on or before the respective dates on which such obligations or any part thereof would become delinquent. Nothing contained in this Article VII shall (i) affect any right or remedy of the Mortgagee under any

provision hereof or of any statute or rule of law to pay any such amount as provided above from its own funds and to add the amount so paid, together with interest at the Default Rate during such time that any amount remains

outstanding, to the Secured Obligations or (ii) relieve the Mortgagor of its obligations to make or provide for the payment of the annual real property taxes and other annual Charges required to be discharged by the Mortgagor under

Section 7.1 hereof. During the continuance of any Event of Default, the

Mortgagee may, at its option, apply all or any part of the sums held pursuant to this Section 7.2 to payment and performance of the Secured Obligations. The

Mortgagor shall redeposit with the Mortgagee

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an amount equal to all amounts so applied as a condition to the cure, if any, of such Event of Default in addition to fulfillment of any other required conditions.

SECTION 7.3 Certain Statutory Liens. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall timely pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions and social security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or which might result in forfeiture of all or any part of the Mortgaged Property.

SECTION 7.4 Stamp and Other Taxes. Unless and to the extent

contested by the Mortgagor in accordance with the provisions of Article IX

hereof, the Mortgagor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Secured Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof the Mortgagee may advance the same and the amount so advanced shall be payable by the Mortgagor to the Mortgagee in accordance with the provisions of Section 14.5 hereof.

SECTION 7.5 Certain Tax Law Changes. In the event of the passage

after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any Charges, and imposing any Charges, either directly or indirectly, on this Mortgage, any Interest Rate Protection Agreement or any other Loan Document, the Mortgagor shall promptly pay to the Mortgagee such amount or amounts as may be necessary from time to time to pay any such Charges.

SECTION 7.6 Proceeds of Tax Claim. In the event that the proceeds

of any tax claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. The Mortgagee shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of the Mortgagee shall in a reasonably prompt manner be released to the Mortgagor.

ARTICLE VIII

INSURANCE

SECTION 8.1 Required Insurance Policies and Coverages. The

Mortgagor shall maintain in respect of the Premises the following insurance policies and coverages:

- (i) Physical hazard insurance on an "all risk" basis covering, without limitation, hazards commonly covered by fire and extended coverage, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in an amount equal to the Full Replacement Cost of the Improvements, with policy limits and deductibles in

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such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed any such requirements, as would be maintained by a Prudent Operator;

(ii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any other adjoining streets, sidewalks and passageways, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon the Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises with policy limits and deductibles in such amounts as the Mortgagee may from time to time require and, if the Mortgagee shall not have imposed such requirements, in such amounts as would be maintained by a Prudent Operator;

(iii) Explosion insurance in respect of any boilers, machinery and similar apparatus located on or comprising the Premises, with policy limits and deductibles in such amounts as the Mortgagee may from time to time require, and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(iv) Business interruption insurance and/or loss of "rental value" insurance covering one (1) year of loss, the term "rental value" to mean the sum of (x) the total estimated gross rental income from tenant occupancy of the Improvements as furnished and equipped under Leases and (y) the total amount of all other charges which are the legal obligation of the Tenants of the Premises under Leases;

(v) If the Premises are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, each as amended, or any successor laws, flood insurance with policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require and, if the Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a Prudent Operator;

(vi) Worker's compensation insurance as required by the laws of the state where the Premises are located to protect the Mortgagor and the Mortgagee against claims for injuries sustained in the course of employment at the Premises; and

(vii) such other insurance, against risks and with such policy limits and deductibles in such amounts as the Mortgagee may from time to time reasonably require, and, if no such requirements shall have been imposed, in such amounts as would be maintained by a Prudent Operator.

SECTION 8.2 Required Form of Insurance Policies. Each Insurance

Policy described in Section 8.1 hereof shall provide that:

(i) it may not be modified, reduced, cancelled or otherwise terminated without at least thirty (30) days' prior written notice to the Mortgagee;

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(ii) the Mortgagee is permitted to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due;

(iii) all losses thereunder shall be payable notwithstanding any act or negligence of the Mortgagor or its agents or employees which otherwise might have resulted in a forfeiture of all or a part of such insurance payments;

(iv) to the extent such Insurance Policy constitutes Property Insurance, all losses payable thereunder shall be payable to the Mortgagee, as loss payee, pursuant to a standard non-contributory New York mortgagee endorsement and shall be in an amount, at least sufficient to prevent coinsurance liability; and

(v) with respect to Liability Insurance, the Mortgagee shall be named as an additional insured.

SECTION 8.3 Settlements. Settlement or adjustment of any claim

under any of the Insurance Policies, if such claim involves any loss in excess of \$1,000,000 (in the reasonable judgment of the Mortgagee), shall require the prior written approval of the Mortgagee, and the Mortgagor shall cause each such policy to contain a provision to such effect. The Mortgagor shall be permitted to settle or adjust any claim under any of the Insurance Policies, if such claim involves any loss less than or equal to \$1,000,000 (in the reasonable judgment of the Mortgagee).

SECTION 8.4 Renewals. At least ten (10) days prior to the

expiration of any Insurance Policy, the Mortgagor shall deliver to the Mortgagee

an Insurance Policy or Policies renewing or extending such expiring Insurance Policy or Policies, renewal or extension Insurance Certificates or other reasonable evidence of renewal or extension providing that the Insurance Policies are in full force and effect.

SECTION 8.5 Additional Insurance. The Mortgagor shall not purchase

separate insurance policies concurrent in form or contributing in the event of loss with those Insurance Policies required to be maintained under this Article

VIII unless the Mortgagee is included thereon as an additional insured and, if

applicable, with loss payable to the Mortgagee under an endorsement containing the provisions described in Section 8.2 hereof. The Mortgagor shall immediately

notify the Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to the Mortgagee the Insurance Policy or Insurance Certificate evidencing such insurance.

SECTION 8.6 Blanket Coverage. The Mortgagor may maintain the

coverages required by Section 8.1 hereof under blanket policies covering the

Premises and other locations owned or operated by the Mortgagor or an Affiliate of the Mortgagor if the terms of such blanket policies otherwise comply with the provisions of Section 8.1 hereof and contain specific coverage allocations in

respect of the Premises complying with the provisions of Section 8.1 hereof.

SECTION 8.7 Delivery After Foreclosure. In the event that the

proceeds of any insurance claim are paid after the Mortgagee has exercised its right to foreclose the Lien hereof, such proceeds shall be paid to the Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the Insurance Policies required to be maintained pursuant to this Mortgage during any redemption period.

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ARTICLE IX

CONTESTING OF PAYMENTS

SECTION 9.1 Contesting of Taxes and Certain Statutory Liens. The

Mortgagor may at its own expense contest the validity, amount or applicability of any Charges by appropriate legal or administrative proceedings, prosecution of which operates to prevent the collection or enforcement thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy such obligations; provided, however, that (i) any such contest shall be conducted in

good faith by appropriate proceedings instituted with reasonable promptness and diligently conducted and (ii) in connection with such contest, the Mortgagor shall have (A) made provision for the payment of such contested Charge on the Mortgagor's books if and to the extent required by GAAP, or (B) at the option and upon the request of the Mortgagee, have deposited with the Mortgagee a sum sufficient to pay and discharge such Charge and the Mortgagee's estimate of all interest and penalties related thereto, properly bonded such amount or obtained a stay of enforcement of any such Lien pending the final determination of such proceeding and (C) in the case of any contested judgment, delivered to the Mortgagee an instrument in which an insurance carrier acceptable to the Mortgagee shall have agreed in writing that full insurance coverage (subject to a customary deductible) exists in respect of such contested judgment. Notwithstanding the foregoing provisions of this Section 9.1, (i) no contest of

any such obligations may be pursued by the Mortgagor if such contest would expose the Mortgagee or any Lender to (A) any possible criminal liability or (B) unless the Mortgagor shall have furnished a bond or other security therefor reasonably satisfactory to the Mortgagee or such Lender, as the case may be, any additional civil liability for failure to comply with such obligations and (ii) if at any time payment or performance of any obligation contested by the Mortgagor pursuant to this Section 9.1 shall become necessary to prevent the

imposition of remedies because of non-payment, the Mortgagor shall pay or perform the same in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 9.2 Contesting of Insurance. The Mortgagor shall not take

any action that could be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises and the Mortgagor shall otherwise comply in all respects with all Insurance Requirements in respect of the Premises; provided, however,

that the Mortgagor may, at its own expense and after written notice to the Mortgagee, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under Article VIII hereof or (ii) cause the Insurance Policy containing

any such Insurance Requirement to be replaced by a new policy complying with the provisions of Article VIII hereof.

ARTICLE X

DESTRUCTION, CONDEMNATION AND RESTORATION

SECTION 10.1 Destruction. If there shall occur any Destruction,

other than a Destruction for a de minimis amount (which for the purposes of this

Section 10.1 shall mean any Destruction for an amount less than or equal to

\$25,000), the Mortgagor shall promptly send to the Mortgagee a written

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notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned and shall be paid to the Mortgagee and deposited in the Collateral Account. All such proceeds, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net

Insurance Proceeds"), shall be applied in accordance with the provisions of

Sections 10.3, 10.4 and 10.5 hereof.

SECTION 10.2 Condemnation. If there shall occur any Taking or the

commencement of any proceeding thereof, the Mortgagor shall immediately notify the Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. The Mortgagee may, at its option, participate in any proceedings or negotiations which might result in any Taking, and the Mortgagor shall deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. The Mortgagee may be represented by counsel satisfactory to it at the expense of the Mortgagor in connection with any such participation. The Mortgagor shall pay all fees, costs and expenses incurred by the Mortgagee in connection with any Taking and in seeking and obtaining any award or payment on account thereof. Any proceeds, award or payment in respect of any Taking are hereby assigned and shall be paid to the Mortgagee. The Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any reasonable third-party expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Condemnation Award"),

shall be applied in accordance with the provisions of Sections 10.3, 10.4 and

10.5 hereof.

SECTION 10.3 Restoration. So long as no Event of Default shall

have occurred and be continuing, in the event there shall be a Net Condemnation Award or Net Insurance Proceeds in an amount less than \$1,000,000, the Mortgagor shall have the right, at the Mortgagor's option, to apply such Net Condemnation Award or Net Insurance Proceeds to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit Agreement or to

perform a restoration (each, a "Restoration") of the Premises. In the event the

Mortgagor elects to perform a Restoration pursuant to the immediately preceding sentence, the Mortgagor shall within thirty (30) days after the date that the Mortgagor receives notice of collection by the Mortgagee of the applicable Net Insurance Proceeds or Net Condemnation Award, as the case may be, deliver to the Mortgagee (i) a written notice of such election and (ii) an Officers' Certificate stating that (A) the Net Insurance Proceeds or Net Condemnation Award, as the case may be, shall be utilized to perform a Restoration in the manner contemplated by this Section 10.3 and (B) no Event of Default has

occurred and is continuing (the items described in clauses (i) and (ii) of this sentence, collectively, the "Restoration Election Notice"). In the event the

Mortgagee does not receive a Restoration Election Notice within such 30-day period, the Mortgagee may apply any such Net Insurance Proceeds or Net

Condemnation Award held by the Mortgagee to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f) of the Credit

Agreement or, at the option of the Mortgagee, may continue to hold such Net Insurance Proceeds or Net Condemnation Award in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations. In the event the Mortgagor elects to perform any Restoration contemplated by this Section 10.3, the Mortgagee shall release such Net

Condemnation Award or Net Insurance Proceeds to the Mortgagor as soon as practicable following receipt of a Restoration Election Notice in accordance with the provisions of Section 8.2(ii) of the Security Agreement. The Mortgagor

shall, within fifteen (15) days following the date of its receipt of any proceeds in respect of a Destruction or Taking, as the case may be, commence and diligently continue to perform the Restoration of that portion or portions of the Improvements subject to such Destruction or affected by such Taking so that, upon the completion of the Restora-

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tion, the Premises will be in the same condition and shall be of at least equal value and utility for its intended purposes as the Premises was immediately prior to such Destruction or Taking. The Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.4 Major Restoration. In the event there shall be a Net

Condemnation Award or Net Insurance Proceeds in an amount equal to or greater than \$1,000,000, the Mortgagee shall have the option to apply such Net Condemnation Award or Net Insurance Proceeds, as the case may be, to the payment of the Secured Obligations in accordance with the provisions of Section 2.13(f)

of the Credit Agreement or to require a Restoration of the Premises. In the event a Restoration is to be performed under this Section 10.4, the Mortgagee

shall not release any part of the Net Condemnation Award or Net Insurance Proceeds except in accordance with the provisions of Section 10.5 hereof, and

the Mortgagor shall, prior to commencing any work to effect a Restoration of the Premises, promptly (but in no event later than ninety (90) days following any Destruction or Taking) furnish to the Mortgagee:

(i) complete plans and specifications (the "Plans and

Specifications") for the Restoration;

(ii) a certificate (an "Architect's Certificate") of an independent,

reputable architect or engineer acceptable to the Mortgagee and licensed in the state where the Premises are located (A) listing all permits and approvals required by law in connection with the Restoration, (B) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained, (C) stating that the Plans and Specifications have been reviewed and approved by the signatory thereto, (D) stating such signatory's estimate (an "Estimate") of the costs

of completing the Restoration and (E) stating that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises will be approximately equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration; and

(iii) if the Estimate exceeds the Net Insurance Proceeds or Net Condemnation Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit (a "Restoration Letter of Credit") or other

irrevocable and unconditional commitment to provide funds (each, a "Restoration Commitment") for the payment of the excess cost of such

Restoration, payable to or in favor of the Mortgagee, as Collateral Agent, which bond, guaranty, Restoration Letter of Credit or Restoration Commitment (A) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to the Mortgagee and, in the case of a Restoration Letter of Credit or Restoration Commitment, shall be provided by a Lender or other financial institution having capital and surplus in excess of \$500 million as shown in its most recent available statement of financial condition and (B) shall be in an amount not less than the excess of the amount of the Estimate over the amount of the Net Condemnation Award or Net Insurance Proceeds, as the case may be, then held by the Mortgagee for application toward the cost of such Restoration.

The Mortgagee shall have the right to review and approve the

Plans and Specifications, which approval shall not be unreasonably withheld, conditioned or delayed. Promptly upon any approval of the Plans and Specifications by the Mortgagee, the Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. The Mortgagor

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shall so complete such Restoration with its own funds to the extent that the amount of any Net Condemnation Award or Net Insurance Proceeds is insufficient for such purpose.

SECTION 10.5 Restoration Advances Following Destruction or Taking of

Mortgaged Property. In the event the Mortgagor shall be required or permitted

to perform a Restoration of the Premises as provided in Section 10.4 hereof, the

Mortgagee shall apply any Net Insurance Proceeds or the Net Condemnation Award held by the Mortgagee on account of the applicable Destruction or Taking to the payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to the Mortgagor or, at the Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other Persons rendering services or material for such Restoration, subject to the following conditions:

(i) Each request for payment shall be made on at least ten (10) days' prior notice to the Mortgagee and shall be accompanied by an Architect's Certificate stating (A) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as approved by the Mortgagee, and in accordance with all provisions of law, (B) the sums requested are required to reimburse the Mortgagor for payments by the Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by the Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (C) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be and (D) that the amount of the Net Insurance Proceeds or Net Condemnation Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an opinion of counsel to the Mortgagor (which counsel shall be independent and acceptable to the Mortgagee), or a title insurance policy, binder or endorsement in form and substance satisfactory to the Mortgagee confirming that (A) all Liens (other than Permitted Collateral Liens) covering that part of the Restoration previously paid for, if any, have been waived and (B) there has not been filed with respect to all or any portion of the Premises any Lien (other than Permitted Collateral Liens); and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Architect's Certificate listing all Permits necessary to comply with all Requirements of Law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event that there shall be any surplus after application of the Net Condemnation Award or the Net Insurance Proceeds to Restoration of the Improvements, such surplus shall be applied as Net Cash Proceeds in accordance with Section 2.13(f) of the Credit Agreement or, at the option of the Mortgagee,

shall be held by the Mortgagee in the Collateral Account as additional collateral to secure the performance by the Mortgagor of the Secured Obligations.

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ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.1 Events of Default. It shall be an Event of Default

hereunder if there shall have occurred and be continuing an Event of Default under the Credit Agreement.

SECTION 11.2 Remedies in Case of an Event of Default. If any Event

of Default shall have occurred and be continuing, the Mortgagee may at its option, in addition to any other action permitted under this Mortgage or the Credit Agreement or by law, statute or in equity, take one or more of the

following actions to the greatest extent permitted by local law:

(i) by written notice to the Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

(ii) personally, or by its agents or attorneys, (A) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Mortgagor relating thereto and, exclude the Mortgagor, its agents and servants wholly therefrom, (B) use, operate, manage and control the Premises and conduct the business thereof, (C) maintain and restore the Premises, (D) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as the Mortgagee may deem advisable, (E) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise or (F) collect and receive all Rents. The Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management except that any amounts so received by the Mortgagee shall be applied as follows:

FIRST: to pay reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) of so entering upon, taking possession of, holding, operating and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges which the Mortgagee may consider necessary or desirable to pay, and any other amounts due to the Mortgagee;

SECOND: without duplication of amounts applied pursuant to clause FIRST above, to the indefeasible payment in full in cash of the Secured Obligations (other than obligations arising under any Interest Rate Protection Agreement) in accordance with the terms of the Credit Agreement;

THIRD: without duplication of amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash pro rata of the obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

FOURTH: the balance, if any, to the Person lawfully entitled thereto (including the Mortgagor or its successors or assigns), if all conditions to the release hereof shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by

the Mortgagee and thereafter applied to any future payments required to be made in accordance with clauses FIRST, SECOND and THIRD above.

(iii) with or without entry, personally or by its agents or attorneys, (A) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the provisions of Section 11.3 or (B) institute

and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

(iv) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Credit Agreement and the other Loan Documents, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

SECTION 11.3 Sale of Mortgaged Property if Event of Default Occurs;

Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing, the Mortgagee may institute an action to foreclose this Mortgage or take such other action as may be permitted and available to the Mortgagee at law or in equity for the enforcement of the Credit Agreement and realization on the Mortgaged Property and proceeds thereon through power of sale or to final judgment and execution thereof for the Secured Obligations, and in furtherance thereof the Mortgagee may sell the Mortgaged Property at one or more sales, as

an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. The Mortgagee may execute and deliver to the purchaser at such sale a conveyance of the Mortgaged Property in fee simple and an assignment or conveyance of all the Mortgagor's Interest in the Leases and the Mortgaged Property, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to make any such recitals, sale, assignment and conveyance, and all of the acts of the Mortgagee as such attorney in fact are hereby ratified and confirmed. The Mortgagor agrees that such recitals shall be binding and conclusive upon the Mortgagor and that any assignment or conveyance to be made by the Mortgagee shall divest the Mortgagor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Mortgaged Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which the Mortgagee may have hereunder, at law or in equity. So long as the Secured Obligations, or any part thereof, remain unpaid, the Mortgagor agrees that possession of the Mortgaged Property by the Mortgagor, or any person claiming under the Mortgagor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Mortgage, the Mortgagor and any person in possession under the Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels in such manner or order as the Mortgagee in its sole discretion may elect. One or more

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exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or all amounts secured hereby are paid in full.

(ii) In the event of any sale made under or by virtue of this Article XI, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of the Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

(iii) The proceeds of any sale made under or by virtue of this Article XI, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article XI or otherwise, shall be applied as follows:

FIRST: to pay the costs and expenses incurred by the Mortgagee in enforcing its remedies under this Mortgage;

SECOND: to pay the costs and expenses of the sale and of any receiver of the Mortgaged Property or any part thereof appointed pursuant to Section 11.5(ii);

THIRD: without duplication of the amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash of the Secured Obligations (other than the obligations arising under the Interest Rate Protection Agreements) in accordance with the terms of the Credit Agreement;

FOURTH: without duplication of the amounts applied pursuant to clauses FIRST, SECOND and THIRD above, to the indefeasible payment in full in cash pro rata of the obligations arising under the Interest Rate Protection Agreements in accordance with the terms of the Interest Rate Protection Agreements; and

FIFTH: the balance, if any, to the Person lawfully entitled thereto (including the Mortgagor or its successors or assigns).

(iv) The Mortgagee (on behalf of any Lender or on its own behalf) or

any Lender or any of their respective Affiliates may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article XI and, in lieu of paying cash therefor, may make settlement for

the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Mortgagee, or such Lender in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Mortgagee or such Lender is authorized to deduct under this Mortgage.

(v) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(vi) If the Premises is comprised of more than one parcel of land, the Mortgagee may take any of the actions authorized by this Section 11.3 in

respect of any or a number of individual parcels.

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SECTION 11.4 Additional Remedies in Case of an Event of Default.

(i) The Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof, and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Mortgage. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, the Mortgagee shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall the Mortgagee

receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(ii) Any recovery of any judgment by the Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Mortgaged Property or any part thereof, or any conveyances, powers, rights and remedies of the Mortgagee hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Mortgagee under this Section 11.4

shall be applied in accordance with the provisions of Section 11.3(iii).

SECTION 11.5 Legal Proceedings After an Event of Default.

(i) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, the Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(ii) Upon the occurrence and during the continuance of an Event of Default, the Mortgagee shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. The Mortgagor hereby consents to the appointment of such receiver. Notwithstanding the appointment of any receiver, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Credit Agreement to the Mortgagee.

(iii) The Mortgagor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any ex-

emption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, the Mortgagor hereby expressly (A) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Mortgage, (B) waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (C) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in connection with this Mortgage and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (D) covenants not to hinder, delay or impede the execution of any power granted or delegated to the Mortgagee by this Mortgage but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Mortgagee shall not be liable for any incorrect or improper payment made pursuant to this Article XI in

the absence of gross negligence or willful misconduct.

SECTION 11.6 Remedies Not Exclusive. No remedy conferred upon or

reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of the Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may elect. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If the Mortgagee accepts any monies required to be paid by the Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Mortgagor to pay the entire sum then due, and the Mortgagor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

ARTICLE XII

SECURITY AGREEMENT AND FIXTURE FILING

SECTION 12.1 Security Agreement. To the extent that the Mortgaged

Property includes personal property or items of personal property which are or are to become fixtures under applicable law, this Mortgage shall also be construed as a security agreement under the UCC; and, upon and during the continuance of an Event of Default, the Mortgagee shall be entitled with respect to such personal property to exercise all remedies hereunder, all remedies available under the UCC with respect to

fixtures and all other remedies available under applicable law. Without limiting the foregoing, such personal property may, at the Mortgagee's option, (i) be sold hereunder together with any sale of any portion of the Mortgaged Property or otherwise, (ii) be sold pursuant to the UCC, or (iii) be dealt with by the Mortgagee in any other manner permitted under applicable law. The Mortgagee may require the Mortgagor to assemble such personal property and make it available to the Mortgagee at a place to be designated by the Mortgagee. The Mortgagor acknowledges and agrees that a disposition of the personal property in accordance with the Mortgagee's rights and remedies in respect to the Mortgaged Property as heretofore provided is a commercially reasonable disposition thereof; provided, however, that the Mortgagee shall give the Mortgagor not less

than ten (10) days' prior notice of the time and place of any intended disposition.

SECTION 12.2 Fixture Filing. To the extent that the Mortgaged

Property includes items of personal property which are or are to become fixtures

such additional security, and, second, to the security created by this Mortgage without affecting the Mortgagee's Lien and rights under this Mortgage.

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Covenants To Run with the Land. All of the grants,

covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to, and bind the successors and assigns of, the Mortgagor. If there shall be more than one mortgagor with respect to the Mortgaged Property, the covenants and warranties hereof shall be joint and several.

SECTION 14.2 No Merger. The rights and estate created by this

Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Mortgagee unless the Mortgagee shall have consented to such merger in writing.

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SECTION 14.3 Concerning Mortgagee.

(i) The Mortgagee has been appointed as collateral agent pursuant to the Credit Agreement. The actions of the Mortgagee hereunder are subject to the provisions of the Credit Agreement. The Mortgagee shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Mortgaged Property), in accordance with this Mortgage and the Credit Agreement. The Mortgagee may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Mortgagee may resign and a successor Mortgagee may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Mortgagee by a successor Mortgagee, that successor Mortgagee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Mortgagee under this Mortgage, and the retiring Mortgagee shall thereupon be discharged from its duties and obligations under this Mortgage. After any retiring Mortgagee's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was the Mortgagee.

(ii) The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property in its possession if such Mortgaged Property is accorded treatment substantially equivalent to that which the Mortgagee, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Mortgagee nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Mortgaged Property.

(iii) The Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Lender, the Mortgagee shall have and may exercise the same rights and powers hereunder. The term "Lenders," "Lender" or any similar terms shall, unless the context clearly otherwise indicates, include the Mortgagee in its individual capacity as a Lender. The Mortgagee may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Mortgagor or any Affiliate of the Mortgagor to the same extent as if the Mortgagee were not acting as collateral agent.

(v) If any portion of the Mortgaged Property also constitutes collateral granted to the Mortgagee under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Mortgagee, in its sole discretion, shall select which provision or provisions shall control.

SECTION 14.4 Mortgagee May Perform; Mortgagee Appointed Attorney-in-

Fact. If the Mortgagor shall fail to perform any covenants contained in this

Mortgage (including, without limitation, the Mortgagor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the

Mortgagor under any Mortgaged Property) or if any warranty on the part of the Mortgagor contained herein shall be breached, the Mortgagee may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Mortgagee

shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Mortgagor fails to pay or perform as and when required hereby and which the Mortgagor does not contest in accordance with the provisions of Section 14.5 hereof. Any and all reasonable amounts so

expended by the Mortgagee shall be paid by the Mortgagor in accordance with the provisions of Article IX hereof. Neither the provisions of this Section 14.4 nor

any action taken by the Mortgagee pursuant to the provisions of this Section

14.4 shall prevent any such failure to observe any covenant contained in this

Mortgage nor any breach of warranty from constituting an Event of Default. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact, with full authority in the place and stead of the Mortgagor and in the name of the Mortgagor, or otherwise, from time to time in the Mortgagee's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents which the Mortgagee may deem necessary or advisable to accomplish the purposes hereof. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 14.5 Expenses. The Mortgagor will upon demand pay to the

Mortgagee the amount of any and all reasonable costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Mortgagee may incur in connection with (i) any action, suit or other proceeding affecting the Mortgaged Property or any part thereof commenced, in which action, suit or proceeding the Mortgagee is made a party or participates or in which the right to use the Mortgaged Property or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Mortgagee to defend or uphold the Lien hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Mortgaged Property with any Requirements of Law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Mortgaged Property, (v) the exercise or enforcement of any of the rights of the Mortgagee or any Secured Party hereunder or (vi) the failure by the Mortgagor to perform or observe any of the provisions hereof. All reasonable amounts expended by the Mortgagee and payable by the Mortgagor under this Section 14.5 shall be due upon demand therefor (together

with interest thereon accruing at the Default Rate during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations. The Mortgagor's obligations under this Section 14.5 shall survive the termination hereof and the

discharge of the Mortgagor's other obligations under this Mortgage, the Credit Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

SECTION 14.6 Indemnity.

(i) The Mortgagor agrees to indemnify, pay and hold harmless the Mortgagee and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Mortgagee and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other

liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnitees in connection with any

investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto), which may be imposed on, incurred by or asserted against that Indemnitee, in any manner relating to or arising out hereof, any Interest Rate Protection Agreement or any other Loan Document (including, without limitation, any misrepresentation by the Mortgagor in this Mortgage, any Interest Rate Protection Agreement or any other Loan Document) (the "Indemnified Liabilities"); provided, however, that the

Mortgagor shall have no obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all

appeals and the expiration of time to appeal) by a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence, bad faith or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Mortgagor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them.

(ii) Survival. The obligations of the Mortgagor contained in this

Section 14.6 shall survive the termination hereof and the discharge of the

Mortgagor's other obligations under this Mortgage, any Interest Rate Protection Agreement and the other Loan Documents.

(iii) Reimbursement. Any amount paid by any Indemnitee as to which

such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Mortgaged Property.

SECTION 14.7 Continuing Security Interest; Assignment. This

Mortgage shall create a continuing Lien on and security interest in the Mortgaged Property and shall (i) be binding upon the Mortgagor, its respective successors and assigns and (ii) inure, together with the rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and the other Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Loan Party) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Lender may assign or otherwise transfer any indebtedness held by it secured by this Mortgage to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender, herein or otherwise, subject however, to the provisions of the Credit Agreement and any applicable Interest Rate Protection Agreement.

SECTION 14.8 Termination; Release. When all the Secured Obligations

have been paid in full and the Commitments of the Lenders to make any Loan or to issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated, this Mortgage shall terminate. Upon termination hereof or any release of the Mortgaged Property or any portion thereof in accordance with the provisions of the Credit Agreement, the Mortgagee shall, upon the request and at the sole reasonable cost and expense of the Mortgagor, forthwith assign, transfer and deliver to the Mortgagor, against receipt and without recourse to or warranty by the Mortgagee, such of the Mortgaged Property to be released (in the case of a release) as may be in possession of the Mortgagee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Mortgaged Property, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Mortgaged Property, as the case may be.

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SECTION 14.9 Modification in Writing. No amendment, modification,

supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by the Mortgagee. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Mortgagor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Mortgage or any other Loan Document, no notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 14.10 Notices. Unless otherwise provided herein or in the

Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, if to the Mortgagor or the Mortgagee, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 14.10.

SECTION 14.11 GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY

TRIAL. THIS MORTGAGE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED

IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED,

WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF MORTGAGED PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. MORTGAGOR AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS SET FORTH IN THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE MORTGAGEE SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY MORTGAGOR REFUSES TO ACCEPT SERVICE, MORTGAGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF MORTGAGEE TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COURTS OF ANY OTHER JURISDICTION. THE PLEDGORS HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 14.12 Severability of Provisions. Any provision hereof

which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 14.13 Limitation on Interest Payable. It is the intention

of the parties to conform strictly to the usury laws, whether state or Federal, that are applicable to the transaction of which this Mortgage is a part. All agreements between the Mortgagor and the Mortgagee whether now existing or

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hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by the Mortgagor for the use, forbearance or detention of the money to be loaned under the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, or for the payment or performance of any covenant or obligation contained herein or in the Credit Agreement, any Interest Rate Protection Agreement or any other Loan Document, exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any such provision, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances the Mortgagor shall have paid an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to the Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any extension of credit by the Mortgagee shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date hereof until payment in full of the Secured Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 14.14 Business Days. In the event any time period or any date

provided in this Mortgage ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 14.15 Relationship. The relationship of the Mortgagee to the

Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage, any Interest Rate Protection Agreement or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower and mortgagor and mortgagee.

SECTION 14.16 Waiver of Stay.

(i) The Mortgagor agrees that in the event that the Mortgagor or any property or assets of the Mortgagor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or the Mortgagor shall otherwise be a party to any Federal or state bankruptcy, insolvency,

moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such law is applicable, then, in any such case, whether or not the Mortgagee has commenced foreclosure proceedings under this Mortgage, the Mortgagee shall be entitled to relief from any such automatic stay as it relates to the exercise of any of the rights and remedies (including, without limitation, any foreclosure proceedings) available to the Mortgagee as provided in this Mortgage or in any other Security Document.

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(ii) The Mortgagee shall have the right to petition or move any court having jurisdiction over any proceeding described in Section 14.16(i) hereof for

the purposes provided therein, and the Mortgagor agrees (i) not to oppose any such petition or motion and (ii) at the Mortgagor's sole cost and expense, to assist and cooperate with the Mortgagee, as may be requested by the Mortgagee from time to time, in obtaining any relief requested by the Mortgagee, including, without limitation, by filing any such petitions, supplemental petitions, requests for relief, documents, instruments or other items from time to time requested by the Mortgagee or any such court.

SECTION 14.17 No Credit for Payment of Taxes or Impositions. The

Mortgagor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and the Mortgagor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Charge on the Mortgaged Property or any part thereof.

SECTION 14.18 No Claims Against the Mortgagee. Nothing contained in

this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 14.19 Obligations Absolute.

All obligations of the Mortgagor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Mortgagor or any other Obligor;

(ii) any lack of validity or enforceability of the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Interest Rate Protection Agreement, any Letter of Credit, any other Loan Document, or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof, any Interest Rate Protection Agreement or any other Loan Document

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except as specifically set forth in a waiver granted pursuant to the provisions of Section 14.9 hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Mortgagor.

SECTION 14.20 Mortgagee's Right To Sever Indebtedness.

(i) The Mortgagor acknowledges that (A) the Mortgaged Property does not constitute the sole source of security for the payment and performance of

the Secured Obligations and that the Secured Obligations are also secured by property of the Mortgagor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (B) the number of such jurisdictions

and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a separate credit agreement or Interest Rate Protection Agreement and (C) the Mortgagor intends that the Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that the Mortgagee would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement or Interest Rate Protection Agreement, mortgage or security instrument. In furtherance of such intent, the Mortgagor agrees that the Mortgagee may at any time by notice (an "Allocation Notice") to the

Mortgagor allocate a portion (the "Allocated Indebtedness") of the Secured

Obligations to the Mortgaged Property and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of the Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Protection Agreement, any other Loan Document or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to the Mortgagor and shall not be available hereunder to satisfy any Secured Obligations of the Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien hereof or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by the Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and the Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 14.20, the

proceeds received by the Mortgagee pursuant to this Mortgage shall be applied by the Mortgagee in accordance with the provisions of Section 11.3(iii) hereof.

(ii) The Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien hereof or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because the Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by the Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that the Mortgagee is not entitled to a deficiency judgment, the Mortgagor shall not (A) introduce in any other jurisdiction such judgment as a defense to enforcement against the Mortgagor of any remedy in the Credit Agreement, any Interest Rate Protection

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Agreement or any other Loan Document or (B) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 14.20,

including, without limitation, any amendment to this Mortgage, any substitute promissory note or affidavit or certificate of any kind, the Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of the Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

(iv) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 14.20 shall be effective only to the maximum extent permitted by law.

SECTION 14.21 Shortened Redemption Election.

Mortgagor agrees to the provisions of Section 846.103 of the Wisconsin Statutes, or any successor provision, permitting Mortgagee, at its option and upon waiving the right to judgment for deficiency, to hold a foreclosure sale of real estate three (3) months after a foreclosure judgment is entered.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth

in the Lease, the Lease and the leasehold estate created thereby and all of Tenant's rights thereunder are and shall at all times be subject and subordinate in all respects to the Security Instruments and the lien thereof, and to all rights of Collateral Agent thereunder, and to any and all advances to be made thereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof.

2. Nondisturbance. So long as Tenant complies with the provisions of

this Agreement, pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Collateral Agent agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the Leased Premises as described in the Lease will not be disturbed during the term of the Lease by reason of a foreclosure. For purposes of

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this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instruments, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any

Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness.

4. No Liability. Notwithstanding anything to the contrary contained

herein or in the Lease, it is specifically understood and agreed that neither the Collateral Agent, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (including Landlord); or

(b) liable for any failure of any prior landlord (including Landlord) to construct any improvements or bound by any covenant to construct any improvement either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space pursuant to any expansion right contained in the Lease; or

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including Landlord); or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord) or by any security deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or

(e) liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property; or

(f) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the written consent of Collateral Agent; or

(g) bound by any consensual or negotiated surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

Notwithstanding the foregoing, Tenant reserves its right to any and all claims or causes of action (i) against such prior landlord for prior losses or damages and (ii) against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

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5. Certain Acknowledgments and Agreements by Tenant. (a) Tenant has

notice that the Lease and the rents and all other sums due thereunder have been assigned to Collateral Agent as security for the notes secured by the Security Instruments. In the event Collateral Agent notifies Tenant of the occurrence of a default under the Security Instruments and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Collateral Agent, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Collateral Agent or as otherwise authorized in writing by Collateral Agent. Landlord irrevocably authorizes Tenant to make the foregoing payments to Collateral Agent upon such notice and demand.

(b) Tenant shall send a copy of any and all notices or statements under the Lease to Collateral Agent at the same time such notices or statements are sent to Landlord.

(c) This Agreement satisfies any and all conditions or requirements in the Lease relating to the granting of a non-disturbance agreement.

6. Collateral Agent to Receive Default Notices. Tenant shall notify

Collateral Agent of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Collateral Agent shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default or, if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. Estoppel. Tenant hereby certifies and represents to Collateral

Agent that as of the date of this Agreement:

(a) the Lease is in full force and effect;

(b) all requirements for the commencement and validity of the Lease have been satisfied and there are no unfulfilled conditions to Tenant's obligations under the Lease;

(c) Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease; to the best of Tenant's knowledge, Landlord is not in default under the Lease; no act, event or condition has occurred which with notice or the lapse of time, or both, would constitute a default by Tenant or Landlord under the Lease; no claim by Tenant of any nature exists against Landlord under the Lease; and all obligations of Landlord have been fully performed;

(d) there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease;

(e) none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one (1) month in advance;

(f) Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Leased Premises;

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(g) the Lease has not been modified or amended and constitutes the entire agreement between Landlord and Tenant relating to the Leased Premises;

(h) Tenant has not assigned, mortgaged, sublet, encumbered, conveyed or otherwise transferred any or all of its interest under the Lease; and

(i) Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary action.

8. Notices. All notices or other written communications hereunder

shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the United States Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. Successors. The obligations and rights of the parties pursuant to

this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties; provided, however,

that in the event of the assignment or transfer of the interest of Collateral Agent, all obligations and liabilities of Collateral Agent under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Collateral Agent's interest is assigned or transferred; and provided, further, that the interest of Tenant under this

Agreement may not be assigned or transferred without the prior written consent of Collateral Agent. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different from the Landlord named in the Recitals.

10. Duplicate Original; Counterparts. This Agreement may be executed

in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

11. Limitation of Collateral Agent's Liability. (a) Collateral

Agent shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(b) In the event that Collateral Agent shall acquire title to the Leased Premises or the Property, Collateral Agent shall have no obligation, nor incur any liability, beyond Collateral Agent 's then equity interest, if any, in the Leased Premises, and Tenant shall look exclusively to such equity interest of Collateral Agent, if any, in the Leased Premises for the payment and discharge of any obligations imposed

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upon Collateral Agent hereunder or under the Lease, and Collateral Agent is hereby released and relieved of any other obligations hereunder and under the Lease.

12. Modification in Writing. This Agreement may not be modified

except by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Lien of Security Instruments. Nothing contained in this

Agreement shall in any way impair or affect the lien created by the Security Instruments or the provisions thereof.

14. Compliance with Lease. Tenant agrees that in the event there is

any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease, the terms and provisions hereof shall be controlling.

15. Governing Law; Severability. This Agreement shall be governed by

the laws of the State of []. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Further Actions. Tenant agrees at its own expense to execute and

deliver, at any time and from time to time upon the request of Collateral Agent or any Acquiring Party, such documents and instruments (in recordable form, if requested) as may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to fully implement or to further evidence the understandings and agreements contained in this Agreement. Moreover, Tenant hereby irrevocably appoints and constitutes Collateral Agent or any Acquiring Party as its true and lawful attorney-in-fact to execute and deliver any such documents or instruments which may be necessary or appropriate, in the opinion of Collateral Agent or any Acquiring Party, to implement or further evidence such understandings and agreements and which Tenant, after thirty (30) days' notice from Collateral Agent or any Acquiring Party, has failed to execute and deliver.

IN WITNESS WHEREOF, Collateral Agent and Tenant have duly executed

this Agreement as of the date first above written.

CREDIT SUISSE FIRST BOSTON,

as Collateral Agent

By: _____

Name:

Title:

_____,
as Tenant

By: _____

Name:

Title:

The undersigned, as the Landlord named in the Recitals, having duly executed this Agreement as of the date first written above, and as mortgagor, pledgor, assignor or debtor under the Security Instruments, hereby accepts and agrees for itself and its successors and assigns, (i) to be bound by the provisions of Section 5 hereof, (ii) that nothing contained in the foregoing Agreement (x) shall in any way be deemed to constitute a waiver by Collateral Agent of any of its rights or remedies under the Security Instruments or (y) shall in any way be deemed to release Landlord from its obligations to comply with the terms, provisions, conditions, covenants and agreements set forth in the Security Instruments and (iii) that the provisions of the Security Instruments remain in full force and effect and must be complied with by Landlord.

_____, a

By: _____

Name:

Title:

ACKNOWLEDGMENT

State of New York)
) ss.:
County of New York)

On the 27th day of July in the year 2000 before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew G. Lampeurer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature)

SCHEDULE A to EXHIBIT 1

Description of Real Property

\$200,000,000

APPLIED POWER INC.

13% Senior Subordinated Notes Due 2009

REGISTRATION RIGHTS AGREEMENT

August 1, 2000

Credit Suisse First Boston Corporation
Goldman, Sachs & Co.
c/o Credit Suisse First Boston Corporation
Eleven Madison Avenue
New York, New York 10010-3629

Ladies and Gentlemen:

Applied Power Inc. (which intends to change its name to Actuant Corporation), a Wisconsin corporation (the "Company"), proposes to issue and
sell to Credit Suisse First Boston Corporation and Goldman, Sachs & Co. (together, the "Initial Purchasers"), upon the terms set forth in a purchase agreement of even date herewith (the "Purchase Agreement"), \$200,000,000 aggregate principal amount of its 13% Senior Subordinated Notes Due 2009 (the "Initial Securities") to be guaranteed (the "Guarantees") by certain of the Company's subsidiaries (collectively, the "Guarantors" and together with the Company, the "Issuers"). The Initial Securities will be issued pursuant to an Indenture, dated as of August 1, 2000, (the "Indenture"), between the Issuers and Bank One Trust Company, N.A., as trustee (the "Trustee").

As an inducement to the Initial Purchasers to enter into the Purchase Agreement, the Issuers agree with the Initial Purchasers, for the benefit of the Initial Purchasers and the holders of the Securities (as defined below) (collectively the "Holders"), as follows:

1. Registered Exchange Offer. Unless not permitted by applicable law (after the Issuers have complied with the ultimate paragraph of this Section 1), the Issuers shall prepare and, within 90 days (such 90th day being a "Filing Deadline") after the date on which the Initial Purchasers purchase the Initial Securities pursuant to the Purchase Agreement (the "Closing Time"), file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Exchange Offer Registration Statement") on an appropriate form under the Securities Act of 1933, as amended (the "Securities Act"), with respect to a proposed offer (the "Registered Exchange Offer") to the Holders of Transfer Restricted Securities (as defined in Section 6 hereof), who are not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer, to issue and deliver to such Holders, in exchange for the Initial Securities, a like aggregate principal amount of debt securities of the Company issued under the Indenture and guaranteed by the Guarantors, identical in all material respects to the Initial Securities and registered under the Securities Act (the "Exchange Securities"). The Issuers shall use their reasonable best efforts to (i) cause such Exchange Offer Registration Statement to become effective under the Securities Act within 180 days after

keep the Registered Exchange Offer open for not less than 30 days (or longer, if required by applicable law) after the date notice of the Registered Exchange Offer is mailed to the Holders (such period being called the "Exchange Offer Period").

If the Issuers commence the Registered Exchange Offer, the Issuers (i) will be entitled to consummate the Registered Exchange Offer 30 days after such commencement (provided that the Issuers have accepted all the Initial Securities theretofore validly tendered in accordance with the terms of the Registered Exchange Offer) and (ii) will consummate the Registered Exchange Offer no later than 40 days after the date on which the Exchange Offer Registration Statement is declared effective (such 40th day being the "Consummation Deadline").

Following the declaration of the effectiveness of the Exchange Offer Registration Statement, the Issuers shall promptly commence the Registered Exchange Offer, it being the objective of such Registered Exchange Offer to enable each Holder of Transfer Restricted Securities electing to exchange the Initial Securities for Exchange Securities (assuming that such Holder is not an affiliate of the Issuers within the meaning of the Securities Act, acquires the Exchange Securities in the ordinary course of such Holder's business and has no arrangements with any person to participate in the distribution of the Exchange Securities and is not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer) to trade such Exchange Securities from and after their receipt without any limitations or restrictions under the Securities Act and without material restrictions under the securities laws of the several states of the United States.

The Issuers acknowledge that, pursuant to current interpretations by the Commission's staff of Section 5 of the Securities Act, in the absence of an applicable exemption therefrom, (i) each Holder which is a broker-dealer electing to exchange Initial Securities, acquired for its own account as a result of market making activities or other trading activities, for Exchange Securities (an "Exchanging Dealer"), is required to deliver a prospectus containing the information set forth in (a) Annex A hereto on the cover of such prospectus, (b) Annex B hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section of such prospectus, and (c) Annex C hereto in the "Plan of Distribution" section of such prospectus in connection with a sale of any such Exchange Securities received by such Exchanging Dealer pursuant to the Registered Exchange Offer and (ii) an Initial Purchaser that elects to sell Securities (as defined below) acquired in exchange for Initial Securities constituting any portion of an unsold allotment, is required to deliver a prospectus containing the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in connection with such sale.

The Issuers shall use their reasonable best efforts to keep the Exchange Offer Registration Statement effective and to amend and supplement the prospectus contained therein, in

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order to permit such prospectus to be lawfully delivered by all persons subject to the prospectus delivery requirements of the Securities Act for such period of time as such persons must comply with such requirements in order to resell the Exchange Securities; provided, however, that (i) in the case where such prospectus and any amendment or supplement thereto must be delivered by an Exchanging Dealer or an Initial Purchaser, such period shall be the lesser of 180 days and the date on which all Exchanging Dealers and the Initial Purchasers have sold all Exchange Securities held by them (unless such period is extended pursuant to Section 3(j) below) and (ii) the Issuers shall make such prospectus and any amendment or supplement thereto available to any broker-dealer for use in connection with any resale of any Exchange Securities for a period of not less than 180 days after the consummation of the Registered Exchange Offer.

If, upon consummation of the Registered Exchange Offer, any Initial Purchaser holds Initial Securities acquired by it as part of its initial distribution, the Issuers, simultaneously with the delivery of the Exchange Securities pursuant to the Registered Exchange Offer, shall issue and deliver to such Initial Purchaser upon the written request of such Initial Purchaser, in exchange (the "Private Exchange") for the Initial Securities held by such

Initial Purchaser, a like principal amount of debt securities of the Company issued under the Indenture and guaranteed by the Guarantors, identical in all material respects to the Initial Securities (the "Private Exchange Securities").

The Initial Securities, the Exchange Securities and the Private Exchange Securities are herein collectively called the "Securities".

In connection with the Registered Exchange Offer, the Issuers shall:

(a) mail to each Holder a copy of the prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(b) keep the Registered Exchange Offer open for not less than 30 days (or longer, if required by applicable law) after the date notice thereof is mailed to the Holders;

(c) utilize the services of a depository for the Registered Exchange Offer with an address in the Borough of Manhattan, The City of New York, which may be the Trustee or an affiliate of the Trustee;

(d) permit Holders to withdraw tendered Initial Securities at any time prior to the close of business, New York time, on the last business day on which the Registered Exchange Offer shall remain open; and

(e) otherwise comply with all applicable laws.

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As soon as practicable after the close of the Registered Exchange Offer or the Private Exchange, as the case may be, the Issuers shall:

(x) accept for exchange all the Initial Securities validly tendered and not withdrawn pursuant to the Registered Exchange Offer and the Private Exchange;

(y) deliver to the Trustee for cancellation all the Initial Securities so accepted for exchange; and

(z) cause the Trustee to authenticate and deliver promptly to each Holder of the Initial Securities, Exchange Securities or Private Exchange Securities, as the case may be, equal in principal amount to the Initial Securities of such Holder so accepted for exchange.

The Indenture will provide that the Exchange Securities will not be subject to the transfer restrictions set forth in the Indenture and that all the Securities will vote and consent together on all matters as one class and that none of the Securities will have the right to vote or consent as a class separate from one another on any matter.

Interest on each Exchange Security and Private Exchange Security issued pursuant to the Registered Exchange Offer and in the Private Exchange will accrue from the last interest payment date on which interest was paid on the Initial Securities surrendered in exchange therefor or, if no interest has been paid on the Initial Securities, from the date of original issue of the Initial Securities.

Each Holder participating in the Registered Exchange Offer shall be required to represent to the Issuers that at the time of the consummation of the Registered Exchange Offer (i) any Exchange Securities received by such Holder will be acquired in the ordinary course of business, (ii) such Holder will have no arrangements or understanding with any person to participate in the distribution of the Securities or the Exchange Securities within the meaning of the Securities Act, (iii) such Holder is not an "affiliate," as defined in Rule 405 of the Securities Act, of the Company or if it is an affiliate, such Holder will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iv) if such Holder is not a broker-dealer, that it is not engaged in, and does not intend to engage in, the distribution of the Exchange Securities and (v) if such Holder is a broker-dealer, that it will receive Exchange Securities for its own account in exchange for Initial Securities that were acquired as a result of marketmaking activities or other trading activities and that it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities.

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Notwithstanding any other provisions hereof, the Issuers will ensure that (i) any Exchange Offer Registration Statement and any amendment thereto and any prospectus forming part thereof and any supplement thereto complies in all material respects with the Securities Act and the rules and regulations thereunder, (ii) any Exchange Offer Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any prospectus forming part of any Exchange Offer Registration Statement, and any supplement to such prospectus, does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

If following the date hereof there has been announced a change in Commission policy with respect to exchange offers that in the reasonable opinion of counsel to the Issuers raises a substantial question as to whether the Registered Exchange Offer is permitted by applicable federal law, the Issuers will seek a no-action letter or other favorable decision from the Commission allowing the Issuers to consummate the Registered Exchange Offer. The Issuers will pursue the issuance of such a decision to the Commission staff level. In connection with the foregoing, the Issuers will take all such other actions as may be requested by the Commission or otherwise required in connection with the issuance of such decision, including without limitation (i) participating in telephonic conferences with the Commission, (ii) delivering to the Commission staff an analysis prepared by counsel to the Issuers setting forth the legal bases, if any, upon which such counsel has concluded that the Registered Exchange Offer should be permitted and (iii) diligently pursuing a resolution (which need not be favorable) by the Commission staff.

2. Shelf Registration. If, (i) because of any change in law or in applicable interpretations thereof by the staff of the Commission, the Issuers are not permitted to effect a Registered Exchange Offer, as contemplated by Section 1 hereof, (ii) the Registered Exchange Offer is not consummated by the 220th day after the Closing Time, (iii) any Initial Purchaser so requests with respect to the Initial Securities (or the Private Exchange Securities) not eligible to be exchanged for Exchange Securities in the Registered Exchange Offer and held by it following consummation of the Registered Exchange Offer within 10 business days following consummation of the Registered Exchange Offer or (iv) any Holder (other than an Exchanging Dealer) is not eligible to participate in the Registered Exchange Offer or, in the case of any Holder (other than an Exchanging Dealer) that participates in the Registered Exchange Offer, such Holder may not resell to the public the Exchange Securities without delivering a prospectus and the prospectus contained in the Exchange Offer Registration Statement is not appropriate or available for such resales by such Holder, and any such Holder so requests, the Issuers shall take the following actions (the date on which any of the conditions described in

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the foregoing clauses (i) through (iv) occur, including in the case of clauses (iii) or (iv) the receipt of the required notice, being a "Trigger Date"):

(a) The Issuers shall as promptly as practicable (but in no event more than 30 days after the Trigger Date (such 30th day being a "Filing Deadline")) file with the Commission and thereafter use their

reasonable best efforts to cause to be declared effective no later than 180 days after the Trigger Date (such 180th day being an "Effectiveness

Deadline") a registration statement (the "Shelf Registration Statement"

and, together with the Exchange Offer Registration Statement, a "Registration Statement") on an appropriate form under the Securities Act

relating to the offer and sale of the Transfer Restricted Securities by the Holders thereof from time to time in accordance with the methods of distribution set forth in the Shelf Registration Statement and Rule 415 under the Securities Act (hereinafter, the "Shelf Registration"); provided,

however, that no Holder (other than an Initial Purchaser) shall be entitled

to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(b) The Issuers shall use their reasonable best efforts to keep the Shelf Registration Statement continuously effective in order to permit the prospectus included therein to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such longer period if extended pursuant to Section 3(j) below) from the date of its effectiveness or such shorter period that will terminate when all the Securities covered by the Shelf Registration Statement (i) have been sold pursuant thereto or (ii) are no longer restricted securities (as defined in Rule 144 under the Securities Act, or any successor rule thereof). The Issuers shall be deemed not to have used their best efforts to keep the Shelf Registration Statement effective during the requisite period if they voluntarily take any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities during that period, unless such action is required by applicable law.

(c) Notwithstanding any other provisions of this Agreement to the contrary, the Issuers shall cause the Shelf Registration Statement and the related prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the

Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

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3. Registration Procedures. In connection with any Shelf Registration contemplated by Section 2 hereof and, to the extent applicable, any Registered Exchange Offer contemplated by Section 1 hereof, the following provisions shall apply:

(a) The Issuers shall (i) furnish to each Initial Purchaser, prior to the filing thereof with the Commission, a copy of the Registration Statement and each amendment thereof and each supplement, if any, to the prospectus included therein and, in the event that an Initial Purchaser (with respect to any portion of an unsold allotment from the original offering) is participating in the Registered Exchange Offer or the Shelf Registration Statement, the Issuers shall use their reasonable best efforts to reflect in each such document, when so filed with the Commission, such comments as such Initial Purchaser reasonably may propose; (ii) include the information set forth in Annex A hereto on the cover of the prospectus

forming a part of the Exchange Offer Registration Statement, in Annex B

hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section of the prospectus forming a part of the Exchange Offer Registration Statement and in Annex C hereto in the "Plan of

Distribution" section of the prospectus forming a part of the Exchange Offer Registration Statement and include the information set forth in Annex

D hereto in the Letter of Transmittal delivered pursuant to the Registered

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Exchange Offer; (iii) if requested by an Initial Purchaser, include the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in the prospectus forming a part of the Exchange Offer Registration Statement; (iv) include within the prospectus contained in the Exchange Offer Registration Statement a section entitled "Plan of Distribution," reasonably acceptable to the Initial Purchasers, which shall contain a summary statement of the positions taken or policies made by the staff of the Commission with respect to the potential "underwriter" status of any broker-dealer that is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of Exchange Securities received by such broker-dealer

in the Registered Exchange Offer (a "Participating Broker-Dealer"), whether

such positions or policies have been publicly disseminated by the staff of the Commission or such positions or policies, in the reasonable judgment of the Initial Purchasers based upon advice of counsel (which may be in-house counsel), represent the prevailing views of the staff of the Commission; and (v) in the case of a Shelf Registration Statement, include the names of the Holders who propose to sell Securities pursuant to the Shelf Registration Statement as selling securityholders.

(b) The Issuers shall give written notice to the Initial Purchasers, the Holders of the Securities and any Participating Broker-Dealer from whom the Issuers have received prior written notice that it will be a Participating Broker-Dealer in the Registered Exchange Offer (which notice pursuant to clauses (ii)-(v) hereof shall be accom-

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panied by an instruction to suspend the use of the prospectus until the requisite changes have been made):

(i) when the Registration Statement or any amendment thereto has been filed with the Commission and when the Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for amendments or supplements to the Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Issuers or their legal counsel of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any

proceeding for such purpose; and

(v) of the happening of any event that requires the Issuers to make changes in the Registration Statement or the prospectus in order that the Registration Statement or the prospectus do not contain an untrue statement of a material fact nor omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in light of the circumstances under which they were made) not misleading.

(c) The Issuers shall make every reasonable effort to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Registration Statement.

(d) The Issuers shall furnish to each Holder of Securities included within the coverage of the Shelf Registration, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference).

(e) The Issuers shall deliver to each Exchanging Dealer and each Initial Purchaser, and to any other Holder who so requests, without charge, at least one copy of the Exchange Offer Registration Statement and any post-effective amendment thereto,

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including financial statements and schedules, and, if any Initial Purchaser or any such Holder requests, all exhibits thereto (including those incorporated by reference).

(f) The Issuers shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of the Shelf Registration, without charge, as many copies of the prospectus (including each preliminary prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. The Issuers consent, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by each of the selling Holders of the Securities in connection with the offering and sale of the Securities covered by the prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

(g) The Issuers shall deliver to each Initial Purchaser, any Exchanging Dealer, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer, without charge, as many copies of the final prospectus included in the Exchange Offer Registration Statement and any amendment or supplement thereto as such persons may reasonably request. The Issuers consent, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by any Initial Purchaser, if necessary, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer in connection with the offering and sale of the Exchange Securities covered by the prospectus, or any amendment or supplement thereto, included in such Exchange Offer Registration Statement.

(h) Prior to any public offering of the Securities pursuant to any Registration Statement the Issuers shall register or qualify or cooperate with the Holders of the Securities included therein and their respective counsel in connection with the registration or qualification of the Securities for offer and sale under the securities or "blue sky" laws of such states of the United States as any Holder of the Securities reasonably requests in writing and do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Securities covered by such Registration Statement; provided, however, that the Issuers shall not be required to (i) qualify

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generally to do business in any jurisdiction where they are not then so qualified or (ii) take any action which would subject them to general service of process or to taxation in any jurisdiction where they are not then so subject.

(i) The Issuers shall cooperate with the Holders of the Securities to facilitate the timely preparation and delivery of certificates representing the Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such de-

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nominations and registered in such names as the Holders may request a reasonable period of time prior to sales of the Securities pursuant to such Registration Statement.

(j) Upon the occurrence of any event contemplated by paragraphs (ii) through (v) of Section 3(b) above during the period for which the Issuers are required to maintain an effective Registration Statement, the Issuers shall

promptly prepare and file a post-effective amendment to the Registration Statement or a supplement to the related prospectus and any other required document so that, as thereafter delivered to Holders of the Securities or purchasers of Securities, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Issuers notify the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer in accordance with paragraphs (ii) through (v) of Section 3(b) above to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Initial Purchasers, the Holders of the Securities and any such Participating Broker-Dealers shall suspend use of such prospectus, and the period of effectiveness of the Shelf Registration Statement provided for in Section 2(b) above and the Exchange Offer Registration Statement provided for in Section 1 above shall each be extended by the number of days from and including the date of the giving of such notice to and including the date when the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer shall have received such amended or supplemented prospectus pursuant to this Section 3(j).

(k) Not later than the effective date of the applicable Registration Statement, the Issuers will provide a CUSIP number for the Initial Securities, the Exchange Securities or the Private Exchange Securities, as the case may be, and provide the applicable trustee with printed certificates for the Initial Securities, the Exchange Securities or the Private Exchange Securities, as the case may be, in a form eligible for deposit with The Depository Trust Company.

(l) The Issuers will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Registered Exchange Offer or the Shelf Registration and will make generally available to their security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Issuers' first fiscal quarter commencing after the effective date of the Registration Statement, which statement shall cover such 12-month period.

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(m) The Issuers shall cause the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Issuers shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) The Issuers may require each Holder of Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Issuers such information regarding the Holder and the distribution of the Securities as the Issuers may from time to time reasonably require for inclusion in the Shelf Registration Statement, and the Issuers may exclude from such registration the Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

(o) The Issuers shall enter into such customary agreements (including, if requested, an underwriting agreement in customary form) and take all such other action, if any, as any Holder of the Securities shall reasonably request in order to facilitate the disposition of the Securities pursuant to any Shelf Registration.

(p) In the case of any Shelf Registration, the Issuers shall (i) make reasonably available for inspection by the Holders of the Securities, any underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders of the Securities or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Issuers and (ii) cause the Issuers' officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders of the Securities or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as shall be reasonably necessary to enable such persons to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that the foregoing inspection and ----- information gathering shall be coordinated on behalf of the Initial Purchasers and on behalf of the other parties, by one counsel designated by and on behalf of such other parties as described in Section 4 hereof.

(q) In the case of any Shelf Registration, the Issuers, if requested by any Holder of Securities covered thereby, shall cause (i) their counsel to deliver an opinion and updates thereof relating to the Securities in customary form addressed to such Holders and the managing underwriters, if any, thereof and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement (it being agreed that the matters to be covered by such opinion shall include, without limitation, the due incorporation and good standing of the Issuers and their subsidiaries; the qualification of the Issuers

due authorization, execution and delivery of the relevant agreement of the type referred to in Section 3(o) hereof; the due authorization, execution, authentication and issuance, and the validity and enforceability, of the applicable Securities; the absence of material legal or governmental proceedings involving the Issuers and their subsidiaries; the absence of governmental approvals required to be obtained in connection with the Shelf Registration Statement, the offering and sale of the applicable Securities, or any agreement of the type referred to in Section 3(o) hereof; the compliance as to form of such Shelf Registration Statement and any documents incorporated by reference therein and of the Indenture with the requirements of the Securities Act and the Trust Indenture Act, respectively; and, as of the date of the opinion and as of the effective date of the Shelf Registration Statement or most recent post-effective amendment thereto, as the case may be, the absence from such Shelf Registration Statement and the prospectus included therein, as then amended or supplemented, and from any documents incorporated by reference therein of an untrue statement of a material fact or the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any such documents, in the light of the circumstances existing at the time that such documents were filed with the Commission under the Exchange Act); (ii) its officers to execute and deliver all customary documents and certificates and updates thereof requested by any underwriters of the applicable Securities and (iii) its independent public accountants and the independent public accountants with respect to any other entity for which financial information is provided in the Shelf Registration Statement to provide to the selling Holders of the applicable Securities and any underwriter therefor a comfort letter in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72.

(r) In the case of the Registered Exchange Offer, if requested by any Initial Purchaser or any known Participating Broker-Dealer, the Issuers shall cause (i) their counsel to deliver to such Initial Purchaser or such Participating Broker-Dealer a signed opinion in the form set forth in Section 6(c) of the Purchase Agreement with such changes as are customary in connection with the preparation of a Registration Statement and (ii) their independent public accountants and the independent public accountants with respect to any other entity for which financial information is provided in the Registration Statement to deliver to such Initial Purchaser or such Participating Broker-Dealer a comfort letter, in customary form, meeting the requirements as to the substance thereof as set forth in Section 6(a) of the Purchase Agreement, with appropriate date changes.

(s) If a Registered Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Initial Securities by Holders to the Issuers (or to such other Person as directed by the Issuers) in exchange for the Exchange Securities or the Private Exchange Securities, as the case may be, the Issuers shall mark, or caused to be marked, on the Initial Securities so exchanged that such Initial Securities are being canceled in exchange for the Exchange Securities or the Private Exchange Securities, as the case may be; in no event shall the Initial Securities be marked as paid or otherwise satisfied.

(t) The Issuers will use their best efforts to (a) if the Initial Securities have been rated prior to the initial sale of such Initial Securities, confirm such ratings will apply to the Securities covered by a Registration Statement, or (b) if the Initial Securities were not previously rated, cause the Securities covered by a Registration Statement to be rated with the appropriate rating agencies, if so requested by Holders of a majority in aggregate principal amount of Securities covered by such Registration Statement, or by the managing underwriters, if any.

(u) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Conduct Rules (the "Rules") of the National

Association of Securities Dealers, Inc. ("NASD")) thereof, whether as a

Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Issuers will assist such broker-dealer in complying with the requirements of such Rules, including, without limitation, by (i) if such Rules, including Rule 2720, shall so require, engaging a "qualified independent underwriter" (as defined in Rule 2720) to participate in the preparation of the Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such

Securities, (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules.

(v) The Issuers shall use their best efforts to take all other steps necessary to effect the registration of the Securities covered by a Registration Statement contemplated hereby.

4. Registration Expenses. (a) All expenses incident to the Issuers' performance of and compliance with this Agreement will be borne by the Issuers, jointly and severally, re-

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ardless of whether a Registration Statement is ever filed or becomes effective, including without limitation:

- (i) all registration and filing fees and expenses;
- (ii) all fees and expenses of compliance with federal securities and state "blue sky" or securities laws;
- (iii) all expenses of printing (including printing certificates for the Securities to be issued in the Registered Exchange Offer and the Private Exchange and printing of Prospectuses), messenger and delivery services and telephone;
- (iv) all fees and disbursements of counsel for the Issuers;
- (v) all application and filing fees in connection with listing the Exchange Securities on a national securities exchange or automated quotation system pursuant to the requirements hereof; and
- (vi) all fees and disbursements of independent certified public accountants of the Issuers (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuers will bear their internal expenses (including, without limitation, all salaries and expenses of their officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any person, including special experts, retained by the Issuers.

(b) In connection with any Registration Statement required by this Agreement, the Issuers will reimburse the Initial Purchasers and the Holders of Transfer Restricted Securities who are tendering Initial Securities in the Registered Exchange Offer and/or selling or reselling Securities pursuant to the "Plan of Distribution" contained in the Exchange Offer Registration Statement or the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel, who shall be chosen by the Holders of a majority in principal amount of the Transfer Restricted Securities for whose benefit such Registration Statement is being prepared.

5. Indemnification. (a) The Issuers agree, jointly and severally, to indemnify and hold harmless each Holder of the Securities, any Participating Broker-Dealer and each person, if any, who controls such Holder or such Participating Broker-Dealer within the meaning of the Securities Act or the Exchange Act (each Holder, any Participating Broker-Dealer and such controlling persons are referred to collectively as the "Indemnified Parties") from and

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against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to a Shelf Registration, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; provided, however, that (i) the Issuers

shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in a Registration Statement or prospectus or in any amendment or supplement thereto or in any

preliminary prospectus relating to a Shelf Registration in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Issuers by or on behalf of such Holder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to a Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Holder or Participating Broker-Dealer from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a prospectus relating to such Securities was required to be delivered by such Holder or Participating Broker-Dealer under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder or Participating Broker-Dealer results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the final prospectus if the Issuers had previously furnished copies thereof to such Holder or Participating Broker-Dealer and such final prospectus corrected such untrue statement or omission; provided further,

however, that this indemnity agreement will be in addition to any liability
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which the Issuers may otherwise have to such Indemnified Party. The Issuers shall also, jointly and severally, indemnify any underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Holders of the Securities if requested by such Holders.

(b) Each Holder of the Securities, severally and not jointly, will indemnify and hold harmless the Issuers and each person, if any, who controls the Issuers within the meaning of the Securities Act or the Exchange Act from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Issuers or any such controlling person

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may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to a Shelf Registration, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Issuers by or on behalf of such Holder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Issuers for any legal or other expenses reasonably incurred by the Issuers or any such controlling person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which such Holder may otherwise have to the Issuers or any of their controlling persons.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof the indemnifying party will not be liable to such indemnified party under this Section 5 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action.

(d) If the indemnification provided for in this Section 5 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a re-

sult of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the exchange of the Securities, pursuant to the Registered Exchange Offer, or the sale of the Securities, pursuant to a Shelf Registration, as applicable, or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuers on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 5(d), the Holders of the Securities shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Holders from the sale of the Securities pursuant to a Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Issuers within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Issuers.

(e) The agreements contained in this Section 5 shall survive the sale of the Securities pursuant to a Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

6. Additional Interest Under Certain Circumstances. (a) Additional interest (the "Additional Interest") with respect to the Transfer Restricted

Securities shall be assessed as follows if any of the following events occur (each such event in clauses (i) through (iv) below being herein called a "Registration Default"):

- (i) any Registration Statement required by this Agreement is not filed with the Commission on or prior to the applicable Filing Deadline;
- (ii) any Registration Statement required by this Agreement is not declared effective by the Commission on or prior to the applicable Effectiveness Deadline;
- (iii) the Registered Exchange Offer has not been consummated on or prior to the Consummation Deadline; or
- (iv) any Registration Statement required by this Agreement has been declared effective by the Commission but (A) such Registration Statement thereafter ceases to be effective or (B) such Registration Statement or the related prospectus ceases to be usable in connection with resales of Transfer Restricted Securities during the periods specified herein because either (1) any event occurs as a result of which the related prospectus forming part of such Registration Statement would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or (2) it shall be necessary to amend such Registration Statement or supplement the related prospectus, to comply with the Securities Act or the Exchange Act or the respective rules thereunder.

Each of the foregoing will constitute a Registration Default whatever the reason

for any such event and whether it is voluntary or involuntary or is beyond the control of the Issuers or pursuant to operation of law or as a result of any action or inaction by the Issuers.

Additional Interest shall accrue on the Transfer Restricted Securities over and above the interest set forth in the title of the Securities from and including the date on which any such Registration Default shall occur to but excluding the date on which all such Registration Defaults have been cured, at a rate of 0.50% per annum (the "Additional Interest Rate") for the first 90-day

period immediately following the occurrence of such Registration Default, regardless of the number of such Registration Defaults. The Additional Interest Rate shall increase by an additional 0.50% per annum with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a maximum Additional Interest Rate of 2.00% per annum.

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(b) A Registration Default referred to in Section 6(a)(iv) hereof shall be deemed not to have occurred and be continuing in relation to a Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to such Shelf Registration Statement to incorporate annual audited financial information with respect to the Issuers where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Issuers that would need to be described in such Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), the Issuers are proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; provided, however, that in any case if such Registration Default occurs for a

continuous period in excess of 30 days, Additional Interest shall be payable in accordance with the above paragraph from the day such Registration Default occurs until such Registration Default is cured.

(c) Any amounts of Additional Interest due pursuant to Section 6(a) will be payable in cash on the regular interest payment dates with respect to the Securities. The amount of Additional Interest will be determined by multiplying the applicable Additional Interest Rate by the principal amount of the Securities and further multiplied by a fraction, the numerator of which is the number of days such Additional Interest Rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

(d) "Transfer Restricted Securities" means each Security until (i) the date

on which such Security has been exchanged by a person other than a broker-dealer for a freely transferable Exchange Security in the Registered Exchange Offer, (ii) following the exchange by a broker-dealer in the Registered Exchange Offer of an Initial Security for an Exchange Security, the date on which such Exchange Security is sold to a purchaser who receives from such broker-dealer on or prior to the date of such sale a copy of the prospectus contained in the Exchange Offer Registration Statement, (iii) the date on which such Security has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement or (iv) the date on which such Security is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

7. Rules 144 and 144A. The Issuers shall use their reasonable best efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time the Issuers are not required to file such reports, they will, upon the request of any Holder of Securities, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A. The Issuers covenant that they will take such further action as any Holder of Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Securities

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without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Issuers will provide a copy of this Agreement to prospective purchasers of Initial Securities identified to the Issuers by the Initial Purchasers upon request. Upon the request of any Holder of Initial Securities, the Issuers shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Issuers to register any of its securities pursuant to the Exchange Act.

8. Underwritten Registrations. If any of the Transfer Restricted Securities covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering ("Managing Underwriters") will be selected by the

Holders of a majority in aggregate principal amount of such Transfer Restricted Securities to be included in such offering.

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person's Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

9. Miscellaneous.

(a) Remedies. The Issuers acknowledge and agree that any failure by the Issuers to comply with their obligations under Section 1 and 2 hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Issuers' obligations under Sections 1 and 2 hereof. The Issuers further agree to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) No Inconsistent Agreements. The Issuers will not on or after the date of this Agreement enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of the Issuers' securities under any agreement in effect on the date hereof.

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(c) Amendments and Waivers. Except as set forth in Section 9(m) hereof, the provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Issuers with the written consent of the Holders of a majority in principal amount of the Securities affected by such amendment, modification, supplement, waiver or consents provided, however, that no amendment, modification, or supplement or waiver or consent to the departure with respect to the provisions of Section 4 hereof shall be effective as against any Holder of Transfer Restricted Securities or any of the Issuers unless consented to in writing by such Holder of Transfer Restricted Securities or the Issuers, as the case may be.

(d) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first class mail, facsimile transmission, or air courier which guarantees overnight delivery:

(1) if to a Holder of the Securities, at the most current address given by such Holder to the Issuers.

(2) if to the Initial Purchasers;

Credit Suisse First Boston Corporation
Eleven Madison Avenue
New York, NY 10010-3629
Fax No.: (212) 325-8278
Attention: Transactions Advisory Group

with a copy to:

Cahill Gordon & Reindel
80 Pine Street
New York, NY 10005
Fax No.: (212) 269-5420
Attention: Geoffrey E. Liebmann, Esq.

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(3) if to any Issuer, at the following address:

Actuant Corporation
6100 North Baker Road
Glendale, WI 53209
Fax No.: (414) 247-5550
Attention: President

with a copy to:

Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
Fax No.: (414) 271-3552

Attention: Anthony W. Asmuth III, Esq.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; three business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by recipient's facsimile machine operator, if sent by facsimile transmission; and on the day delivered, if sent by overnight air courier guaranteeing next day delivery.

(e) Third Party Beneficiaries. The Holders shall be third party beneficiaries to the agreements made hereunder between the Issuers, on the one hand, and the Initial Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect their rights or the rights of Holders hereunder.

(f) Successors and Assigns. This Agreement shall be binding upon the Issuers and their successors and assigns.

(g) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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(j) Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(k) Securities Held by the Issuers. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Issuers or their affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(l) Guarantors. So long as any Transfer Restricted Securities remain outstanding, the Company shall cause each of its subsidiaries that becomes a Guarantor of the Securities under the Indenture to execute and deliver a counterpart to this Agreement which subjects such subsidiary to the provisions of this Agreement as a Guarantor. Each of the Guarantors agrees to join the Company in all of its undertakings hereunder to effect the Registered Exchange Offer (which will be guaranteed by each of the Guarantors with terms identical to such Guarantors' guaranty of the Securities) and the filing of any Shelf Registration Statement required hereunder (including, without limitation, the undertakings in Sections 3, 4 and 5 hereof).

The Issuers hereby submit to the non-exclusive jurisdiction of the federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

[Signature Page Follows]

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Issuers a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the several Initial Purchasers and the Issuers in accordance with its terms.

Very truly yours,

APPLIED POWER INC.

By: /s/

Name
Title:

APW TOOLS & SUPPLIES, INC.

By: /s/

Name
Title:

VERSA TECHNOLOGIES, INC.

By: /s/

Name
Title:

APPLIED POWER INVESTMENTS II, INC.

By: /s/

Name:
Title:

COLUMBUS MANUFACTURING LLC

BY: APPLIED POWER INC.

By: /s/

Name:
Title:

The foregoing Registration
Rights Agreement is hereby confirmed
and accepted as of the date first
above written.

CREDIT SUISSE FIRST BOSTON CORPORATION
GOLDMAN, SACHS & CO.

BY: CREDIT SUISSE FIRST BOSTON CORPORATION

By: /s/

Name:
Title:

=====

APPLIED POWER INC.,
as Issuer

The SUBSIDIARY GUARANTORS named herein,
as Guarantors

and

BANK ONE TRUST COMPANY, N.A.,
as Trustee

INDENTURE

Dated as of August 1, 2000

13% Senior Subordinated Notes due 2009

=====

CROSS-REFERENCE TABLE

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INDENTURE, dated as of August 1, 2000, among APPLIED POWER INC. (which
intends to change its name to Acutant Corporation), a Wisconsin corporation (the
"Company"), the Subsidiary Guarantors named herein (the "Subsidiary Guarantors")

and BANK ONE TRUST COMPANY, N.A., a national banking association, as Trustee
(the "Trustee").

The Company has duly authorized the creation of an issue of
\$200,000,000 13% Series A Senior Subordinated Notes due 2009 in the form of
Initial Notes (as defined below) and, if and when issued in connection with a
registered exchange for such Initial Notes, 13% Series B Senior Subordinated
Notes due 2009 in the form of Exchange Notes (as defined below) and, if and when
issued in connection with a private exchange for such Initial Notes, 13% Senior
Subordinated Private Exchange Notes due 2009 in the form of Private Exchange
Notes (as defined below), and, to provide therefor, the Company and the
Subsidiary Guarantors have duly authorized the execution and delivery of this
Indenture.

Each party hereto agrees as follows for the benefit of each other
party and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE ONE

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

"Accounts Receivable Facility" means any credit facility or

conditional sale contract or similar arrangement providing financing secured
directly or indirectly only by the accounts receivable of the Company or its
Subsidiaries.

"Acquired Indebtedness" of any particular Person means Indebtedness of

any other Person existing at the time such other Person merged with or into or
became a Restricted Subsidiary of such particular Person or assumed by such
particular Person in connection with the acquisition of assets from any other
person, and not incurred by such other person in connection with, or in
contemplation of, such other Person merging with or into such particular Person
or becoming a Restricted Subsidiary of such particular Person or such
acquisition.

"Additional Assets" means

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(1) any property or assets (other than Indebtedness and Capital Stock) in a Related Business,

(2) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary;

provided, however, that any such Restricted Subsidiary described in clause (2)

or (3) above is primarily engaged in a Related Business.

"Adjusted Maximum Amount" has the meaning provided in Section

10.04(b).

"Affiliate" of any specified Person means any other Person, directly

or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For purposes of the provisions described in Sections 4.10, 4.12 and 4.15 only, "Affiliate" shall also mean any beneficial owner of Capital Stock representing 5% or more of the total voting power of the Voting Stock (on a fully diluted basis) of the Company or of rights or warrants to Purchase such Capital Stock (whether or not currently exercisable) and any Person who would be an Affiliate of any such beneficial owner pursuant to the first sentence hereof.

"Affiliate Transaction" has the meaning provided in Section 4.12.

"Agent" means any Registrar, Paying Agent or co-Registrar.

"Aggregate Payments" has the meaning provided in Section 10.04(b).

"Asset Disposition" means any sale, lease, transfer or other

disposition (or series of related sales, leases,

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transfers or dispositions) by the Company or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a "disposition"), of

(1) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary),

(2) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary, or

(3) any other assets of the Company or any Restricted Subsidiary outside of the ordinary course of business of the Company or such Restricted Subsidiary

(other than, in the case of (1), (2) and (3) above, (x) a disposition by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Wholly Owned Subsidiary, (y) for purposes of Section 4.15 only, a disposition that constitutes a Restricted Payment permitted by Section 4.11 and (z) disposition of assets with a fair market value of less than \$1.0 million).

"Attributable Debt" in respect of a Sale/Leaseback Transaction means,

as at the time of determination, the present value (discounted at the interest rate borne by the Notes, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has

been extended).

"Authenticating Agent" has the meaning provided in Section 2.02.

"Average Life" means, means, as of the date of determination, with

respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (x) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (y) the sum of all such payments.

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"Bankruptcy Law" means Title 11, U.S. Code or any similar Federal,

state or foreign law for the relief of debtors.

"Board of Directors" means the Board of Directors of the Company or

any Subsidiary Guarantor, as applicable, or any committee thereof duly authorized to act on behalf of such Board.

"Board Resolution" means, with respect to any Person, a copy of a

resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day" means each day which is not a Legal Holiday.

"Capital Lease Obligations" means an obligation that is required to be

classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Capital Stock" of any Person means any and all shares, interests,

rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"Change of Control" means the occurrence of any of the following

events:

(1) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (1) such person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of

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the Voting Stock of the Company (for the purpose of this clause (1) a Person shall be deemed to beneficially own the Voting Stock of a corporation that is beneficially owned (as defined above) by another corporation (a "parent corporation") if such Person beneficially owns (as

defined above) at least 50% of the aggregate voting power of all classes of Voting Stock of such parent corporation);

(2) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of 66-2/3% of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office;

(3) the adoption of a plan relating to the liquidation or dissolution of the Company; or

(4) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, or the sale of all or substantially all the assets of the Company to another Person, and, in the case of any such merger or consolidation, the securities of the Company that are outstanding immediately prior to such transaction and which represent 100% of the aggregate voting power of the Voting Stock of the Company are changed into or exchanged for cash, securities or property, unless pursuant to such transaction such securities are changed into or exchanged for, in addition to any other consideration, securities of the surviving corporation that represent immediately after such transaction, at least a majority of the aggregate voting power of the Voting Stock of the surviving corporation.

"Change of Control Offer" has the meaning provided in Section 4.14.

"Change of Control Purchase Date" has the meaning provided in Section 4.14.

"Change of Control Purchase Price" has the meaning specified in Section 4.14.

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"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means the party named as such in this Indenture until a successor replaces it and thereafter means such successor.

"Consolidated Coverage Ratio" as of any date of determination means the ratio of (x) the aggregate amount of EBITDA for the period of the most recent four consecutive fiscal quarters ending at least 45 days prior to the date of such determination to (y) Consolidated Interest Expense for such four fiscal quarters; provided, however, that

(1) if the Company or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period and the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged with the proceeds of such new Indebtedness as if such discharge had occurred on the first day of such period,

(2) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Company or such Restricted Subsidiary has not earned the interest income actually earned during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness,

(3) if since the beginning of such period the Company or any Restricted Subsidiary shall have made any Asset

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Disposition, the EBITDA for such period shall be reduced by an amount equal to the EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to the EBITDA (if negative) directly attributable thereto for such period, and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale),

(4) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made hereunder, which constitutes all or substantially all of an operating unit of a business, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period and

(5) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition occurred on the first day of such period.

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For purposes of this definition, whenever pro forma effect is to be given to any disposition or acquisition of assets, the pro forma calculations of any expense or cost reductions or other operating improvements shall be determined in accordance with Regulation S-X promulgated under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months).

"Consolidated Interest Expense" means, for any period, the total

interest expense of the Company and its consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent incurred by the Company or its Restricted Subsidiaries, without duplication,

- (1) interest expense attributable to capital leases,
- (2) amortization of debt discount and debt issuance cost,
- (3) capitalized interest,
- (4) non-cash interest expenses,
- (5) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing,
- (6) net costs associated with Hedging Obligations (including amortization of fees),
- (7) Preferred Stock dividends in respect of all Preferred Stock held by Persons other than the Company or a Wholly Owned Subsidiary,
- (8) interest incurred in connection with Investments in discontinued operations,
- (9) interest accruing on any Indebtedness of any other Person to the extent such Indebtedness is Guaranteed by (or secured by the assets of) the Company or any Restricted Subsidiary and
- (10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Company) in connection with Indebtedness Incurred by such plan or trust.

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"Consolidated Net Income" means, for any period, the net income of the

Company and its consolidated Subsidiaries; provided, however, that there shall

not be included in such Consolidated Net Income:

- (1) any net income of any Person (other than the Company) if such Person is not a Restricted Subsidiary, except that:
 - (A) subject to the exclusion contained in clause (4) below, the Company's equity in the net income of any such Person for such period

shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (3) below); and

(B) the Company's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income;

(2) any net income (or loss) of any Person acquired by the Company or a Subsidiary in a pooling of interests transaction for any period prior to the date of such acquisition;

(3) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(A) subject to the exclusion contained in clause (4) below, the Company's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary

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as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Restricted Subsidiary, to the limitation contained in this clause); and

(B) the Company's equity in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(4) any gain (or loss) realized upon the sale or other disposition of any assets of the Company, its consolidated Subsidiaries or any other Person (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(5) extraordinary gains or losses;

(6) the cumulative effect of a change in accounting principles; and

(7) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued).

Notwithstanding the foregoing, for the purposes of Section 4.10 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries to the Company or a Restricted Subsidiary to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under such covenant pursuant to clause (a) (3) (E) thereof.

"Consolidated Net Worth" means the total of the amounts shown on the

balance sheet of the Company and its consolidated Subsidiaries, determined on a consolidated basis in accordance with GAAP, as of the end of the most recent fiscal quarter of the Company ending at least 45 days prior to the taking of any action for the purpose of which the determination is being made, as:

(1) the par or stated value of all outstanding Capital Stock of the Company plus;

(2) paid-in capital or capital surplus relating to such Capital Stock plus;

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(3) any retained earnings or earned surplus less (x) any accumulated deficit and (y) any amounts attributable to Disqualified Stock.

"covenant defeasance option" has the meaning provided in Section 8.01.

"Credit Facility" means the Credit Agreement (including all documents

entered into by the Company and any subsidiary of the Company in connection therewith (including Hedging Obligations)), to be dated on or about the Effective Date among the Company, Credit Suisse First Boston and the other

agents and lenders named therein, and any other bank credit agreement or similar facility entered into in the future by the Company or any Restricted Subsidiary, as any of the same, in whole or in part, may be amended, renewed, extended, increased (but only so long as such increase is permitted under the terms of this Indenture), substituted, refinanced, restructured or replaced (including, without limitation, any successive renewals, extensions, increases, substitutions, refinancings, restructurings, replacements, supplements or other modifications of the foregoing).

"Currency Agreement" means in respect of a Person, any foreign

exchange contract, currency swap agreement or other similar agreement designed to protect such Person against fluctuations in currency values.

"Custodian" means any receiver, trustee, assignee, liquidator,

sequestrator or similar official under any Bankruptcy Law.

"Default" means any event which is, or after notice or passage of time

or both would be, an Event of Default.

"Depository" means The Depository Trust Company, its nominees and

their respective successors.

"Designated Senior Indebtedness" means

(1) the Indebtedness under the Credit Facility; and

(2) any other Senior Indebtedness of the Company which, at the date of determination, has an aggregate principal amount outstanding of, or under which, at the date of determination, the holders thereof are committed to lend up to, at least \$25 million and is specifically designated by the Company in the instrument evidencing or

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governing such Senior Indebtedness as "Designated Senior Indebtedness" for purposes of this Indenture.

"Disqualified Stock" means, with respect to any Person, any Capital

Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event

(i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise,

(ii) is convertible or exchangeable for Indebtedness or Disqualified Stock or

(iii) is redeemable or must be purchased, upon the occurrence of certain events or otherwise, by such Person at the option of the holder thereof, in whole or in part,

in each case on or prior to the first anniversary of the Stated Maturity of the Notes; provided, however, that any Capital Stock that would not constitute

Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock, upon the occurrence of an "asset sale" or "change of control" occurring prior to the first anniversary of the Stated Maturity of the Notes shall not constitute Disqualified Stock if:

- (1) the "asset sale" or "change of control" provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the terms applicable to the Notes and described in Sections 4.14 and 4.15; and
- (2) any such requirement only becomes operative after compliance with such terms applicable to the Notes, including the purchase of any Notes tendered pursuant thereto.

"Distribution" means the spin-off of Applied Power Inc.'s integrated

electronics enclosures business as a separate publicly traded company.

"DTC" means The Depository Trust Company, its nominees and their

respective successors.

"EBITDA" for any period means the sum of Consolidated Net Income, plus

ing to the extent deducted in calculating such Consolidated Net Income:

- (1) all income tax expense of the Company and its consolidated Restricted Subsidiaries,
- (2) depreciation expense of the Company and its consolidated Restricted Subsidiaries,
- (3) amortization expense of the Company and its consolidated Restricted Subsidiaries (excluding amortization expense attributable to a prepaid cash item that was paid in a prior period),
- (4) non-recurring financing, legal and accounting charges of not more than \$30.0 million relating to the Transactions,
- (5) contract termination recoveries of \$1.4 million received prior to the Issue Date,
- (6) in the case of any determination that includes one or more fiscal quarters ending prior to the Issue Date, an amount equal to the excess of actual general corporate expenses for such fiscal quarters over the product of \$1.25 million times the number of such fiscal quarters included in such determination, and
- (7) all other non-cash charges of the Company and its consolidated Restricted Subsidiaries (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period), in each case for such period.

Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and non-cash charges of, a Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion) that the net income of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to the Company by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders.

"Effective Date" means the effective date of the Distribution.

"Event of Default" has the meaning provided in Section 6.01.

"Excess Cash Flow" means, for any fiscal year of the Company, the

excess of (a) EBITDA for such fiscal year over (b) the sum, without duplication, of (i) the amount of any cash income taxes payable by the Company and its consolidated Restricted Subsidiaries with respect to such fiscal year, (ii) scheduled cash interest paid (net of cash interest received) by the Company and its consolidated Restricted Subsidiaries during such fiscal year, (iii) capital expenditures (as determined in accordance with GAAP) made in cash by the Company and its consolidated Restricted Subsidiaries during such fiscal year, except to the extent financed with the proceeds of Indebtedness, net insurance proceeds or net condemnation awards, (iv) scheduled permanent repayments of Indebtedness made by the Company and its consolidated Restricted Subsidiaries during such fiscal year, and (v) mandatory prepayments of the principal of revolving loans under the Credit Facility during such fiscal year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such revolving loans; provided that, to the extent otherwise included therein, the Net Available Cash from Asset Dispositions and dispositions resulting in net insurance proceeds or net condemnation awards shall be excluded from the calculation of Excess Cash Flow.

"Exchange Act" means the Securities Exchange Act of 1934, as amended,

or any successor statute or statutes thereto.

"Exchange Notes" has the meaning provided in the Appendix.

"Fair Share" has the meaning provided in Section 10.04(b).

"Fair Share Shortfall" has the meaning provided in Section 10.04(c).

"Foreign Restricted Subsidiary" means a Restricted Subsidiary that is

organized and existing under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

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"Fraudulent Transfer Laws" has the meaning provided in Section

10.04(a).

"Funding Subsidiary Guarantor" has the meaning provided in Section

10.04(b).

"GAAP" means generally accepted accounting principles in the United

States of America as in effect as of the Issue Date, including those set forth in

- (1) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants,
- (2) statements and pronouncements of the Financial Accounting Standards Board,
- (3) such other statements by such other entity as approved by a significant segment of the accounting profession, and
- (4) the rules and regulations of the SEC governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"guarantee" means any obligation, contingent or otherwise, of any

Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person

- (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of agreements to keep-well, to take-or-pay or to maintain financial statement conditions or otherwise), or
- (ii) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "guarantee" shall not include endorsements for collection or deposit in the ordinary course

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of business. The term "guarantee" used as a verb has a corresponding meaning. The term "guarantor" shall mean any Person guaranteeing any obligation.

"Hedging Obligations" of any Person means the obligations of such

Person pursuant to any Interest Rate Agreement or Currency Agreement.

"Holder" or "Noteholder" means the Person in whose name a Note is

registered on the Registrar's books.

"Incur" means issue, assume, guarantee, incur or otherwise become

liable; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The term "Incurrence" when used as a noun shall have a correlative meaning. The accretion of principal of a non-interest bearing or other discount security shall not be deemed the Incurrence of Indebtedness.

"Indebtedness" means, with respect to any Person on any date of

determination (without duplication):

- (1) the principal in respect of
 - (A) indebtedness of such Person for money borrowed and
 - (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such

indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

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(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary of such Person, the liquidation preference with respect to, any Preferred Stock (but excluding, in each case, any accrued dividends);

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, IN either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured; and

(8) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

"Indenture" means this Indenture, as amended or supplemented from time

to time in accordance with the terms hereof.

"Initial Notes" has the meaning provided in the Appendix.

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"Initial Purchaser" has the meaning provided in the Appendix.

"Interest Payment Date" means the stated maturity of an installment of

interest on the Notes.

"Interest Rate Agreement" means in respect of a Person any interest

rate swap agreement, interest rate cap agreement or other financial agreement or arrangement designed to protect such Person against fluctuations in interest rates.

"Investment" by any Person in any other Person means, with respect to

any Person, any direct or indirect advance, loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of the lender) or other extensions of credit (including by way of guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by such other Person. For purposes of the definition of "Unrestricted Subsidiary", the definition of "Restricted Payment" and Section 4.10,

(1) "Investment" shall include the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of the Company at the time that such

Subsidiary is designated an Unrestricted Subsidiary; provided, however,

that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to (x) the Company's "Investment" in such Subsidiary at the time of such redesignation less (y) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company.

"Issue Date" means the date on which the Notes are originally issued.

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"legal defeasance option" has the meaning provided in Section 8.01.

"Legal Holiday" means a Saturday, a Sunday, any day which is a holiday

under the laws of the State of New York or the State of Wisconsin or a day on which banking institutions in the State of New York or the State of Wisconsin are authorized or required by law to close. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, such record date shall not be affected.

"Leverage Ratio" means, at any date of determination, the ratio of

consolidated Indebtedness of the Company and its consolidated Restricted Subsidiaries on such date to EBITDA for the period of four consecutive fiscal quarters of the Company most recently ended as of such date; provided, however, that

(1) if the Company or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to calculate the Leverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Indebtedness for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period and the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged with the proceeds of such new Indebtedness as if such discharge had occurred on the first day of such period,

(2) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Leverage Ratio, EBITDA and Indebtedness for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Company or such Restricted Subsidiary had not earned the interest income actually earned during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness,

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(3) if since the beginning of such period the Company or any Restricted Subsidiary shall have made any Asset Disposition, the EBITDA for such period shall be reduced by an amount equal to the EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to the EBITDA (if negative) directly attributable thereto for such period, and Indebtedness for such period shall be reduced by an amount equal to the Indebtedness directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Indebtedness for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale),

(4) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an

Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made hereunder, which constitutes all or substantially all of an operating unit of a business, EBITDA and Indebtedness for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period, and

(5) if since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during such period, EBITDA and Indebtedness for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition occurred on the first day such period.

For purposes of this definition, whenever pro forma effect is to be given to any disposition or acquisition of as-

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sets, the pro forma calculations of any expense or cost reductions or other operating improvements shall be determined in accordance with Regulation S-X promulgated under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months).

"Lien" means any mortgage, pledge, security interest, encumbrance,

lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Maturity Date" means May 1, 2009.

"Net Available Cash" from an Asset Disposition means cash payments

received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties or assets or received in any other non-cash form), in each case net of

(1) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Disposition,

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from such Asset Disposition,

(3) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of such Asset Disposition, and

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(4) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition.

The amounts in clauses (1) through (4) above, to the extent estimates are necessary, shall be estimated reasonably and in good faith by the Company.

"Net Cash Proceeds," with respect to any issuance or sale of Capital

Stock, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

"Notes" means the Initial Notes, the Exchange Notes and the Private

Exchange Notes treated as a single class of securities, as amended or supplemented from time to time in accordance with the terms hereof, that are issued pursuant to this Indenture.

"Offering Circular" means the Offering Circular dated July 21, 2000,

pursuant to which the \$200.0 million aggregate principal amount of 13% Series A Senior Subordinated Notes due 2009 in the form of Initial Notes were offered, and any supplement thereto.

"Officer" means, with respect to any Person, the Chairman of the

Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Controller, the Treasurer, or the Secretary of such Person, or any other officer designated by the Board of Directors serving in a similar capacity.

"Officers' Certificate" means, with respect to any Person, a

certificate signed by two Officers or by an Officer and either a Treasurer or Assistant Treasurer or an Assistant Secretary of such Person and otherwise complying with the requirements of Sections 13.04 and 13.05, to the extent they relate to the making of an Officers' Certificate.

"Opinion of Counsel" means a written opinion from legal counsel, who

may be an employee or counsel for either or both of the Company, and who is reasonably acceptable to the

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Trustee complying with the requirements of Sections 13.04 and 13.05, to the extent they relate to the giving of an Opinion of Counsel.

"Paying Agent" has the meaning provided in Section 2.03.

"Permitted Interest Rate or Currency Agreement" of any Person means

any Interest Rate or Currency Agreement entered into with one or more financial institutions in the ordinary course of business that is designed to protect such Person against fluctuations in interest rates or currency exchange rates with respect to Indebtedness Incurred and which shall have a notional amount no greater than the payments due with respect to the Indebtedness being hedged thereby, or in the case of currency protection agreements, against currency exchange rate fluctuations in the ordinary course of business relating to then existing financial obligations or then existing or sold production and not for purposes of speculation.

"Permitted Investment" means an Investment by the Company or any

Restricted Subsidiary in

(1) the Company, a Subsidiary Guarantor, a Wholly Owned Subsidiary or a Person that will, upon the making of such Investment, become a Wholly Owned Subsidiary; provided, however, that the primary business of such Restricted Subsidiary is a Related Business;

(2) another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company, a Subsidiary Guarantor or a Wholly Owned Subsidiary; provided, however, that such Person's primary business is a Related Business;

(3) Temporary Cash Investments;

(4) receivables owing to the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ul-

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timately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(6) stock, obligations or securities received in settlement of debts

created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments;

(7) any consolidation or merger of a Wholly Owned Subsidiary of the Company to the extent otherwise permitted under this Indenture;

(8) any investment made as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with Section 4.15;

(9) Investments in Permitted Interest Rate or Currency Agreements;

(10) other Investments in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (10) since the date of this Indenture, not to exceed \$5.0 million.

"Person" means any individual, corporation, partnership, limited

liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Preferred Stock," as applied to the Capital Stock of any Person,

means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"principal" of a Note means the principal of the Note plus the

premium, if any, payable on the Note which is due or overdue or is to become due at the relevant time.

"Private Exchange Notes" has the meaning provided in the Appendix.

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"Public Equity Offering" means an underwritten primary public offering

of common stock of the Company pursuant to an effective registration statement under the Securities Act.

"Record Date" means each Record Date specified in the Notes, whether

or not a Legal Holiday.

"Redemption Date," when used with respect to any Note to be redeemed,

means the date fixed for such redemption pursuant to this Indenture and the Notes.

"Redemption Price," when used with respect to any Note to be redeemed,

means the price fixed for such redemption pursuant to this Indenture and the Notes.

"Refinance" means, in respect of any Indebtedness, to refinance,

extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness.

"Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means Indebtedness that Refinances any

Indebtedness of the Company or any Restricted Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; provided, however, that

(1) such Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced,

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced, and

(3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding or committed (plus fees and expenses, including any premium and

defeasance costs) under the Indebtedness being Refinanced;

provided, further, however, that Refinancing Indebtedness shall not include (x) Indebtedness of a Subsidiary that Refinances Indebtedness of the Company or (y) Indebtedness of the Company

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or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

"Registrar" has the meaning provided in Section 2.03.

"Registration Rights Agreement" has the meaning set forth in the

Appendix.

"Regulation S" means Regulation S under the Securities Act.

"Related Business" means any business related, ancillary or

complementary to the businesses of the Company and the Restricted Subsidiaries on the Issue Date.

"Representative" means any trustee, agent or representative (if any)

for an issue of Senior Indebtedness of the Company.

"Restricted Payment" with respect to any Person means

(1) the declaration or payment of any dividends or any other distributions of any sort in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of its Capital Stock (other than dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock) and dividends or distributions payable solely to the Company or a Restricted Subsidiary, and other than pro rata dividends or other distributions made by a Subsidiary that is not a Wholly Owned Subsidiary to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation)),

(2) the purchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company held by any Person or of any Capital Stock of a Restricted Subsidiary held by any Affiliate of the Company (other than a Restricted Subsidiary), including the exercise of any option to exchange any Capital Stock (other than into Capital Stock of the Company that is not Disqualified Stock),

(3) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sink-

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ing fund payment of any Subordinated Obligations (other than the purchase, repurchase or other acquisition of Subordinated Obligations purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of acquisition), or

(4) the making of any Investment in any Person (other than a Permitted Investment).

"Restricted Subsidiary" means any Subsidiary of the Company that is

not an Unrestricted Subsidiary.

"Rule 144A" means Rule 144A under the Securities Act.

"Sale/Leaseback Transaction" means an arrangement relating to property

now owned or hereafter acquired whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, or any

successor statute or statutes thereto.

"Senior Indebtedness" of a Person means

(1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred,

(2) accrued and unpaid interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person to the extent post-filing interest is allowed in such proceeding) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable unless, in the case of (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such obligations are subordinate in right of payment to the Notes, and

(3) obligations of such Person under the Credit Facility;

provided, however, that Senior Indebtedness shall not include

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(1) any obligation of such Person to any Subsidiary,

(2) any liability for Federal, state, local or other taxes owed or owing by such Person,

(3) any accounts payable or other liability to trade creditors arising in the ordinary course of business (including guarantees thereof or instruments evidencing such liabilities),

(4) any Indebtedness of such Person (and any accrued and unpaid interest in respect thereof) which is subordinate or junior in any respect to any other Indebtedness or other obligation of such Person, or

(5) that portion of any Indebtedness which at the time of Incurrence is Incurred in violation of this Indenture.

"Senior Subordinated Indebtedness" means (i) with respect to the

Company, the Notes and any other Indebtedness of the Company that specifically provides that such Indebtedness is to have the same rank as the Notes in right of payment and is not subordinated by its terms in right of payment to any Indebtedness or other obligation of the Company which is not Senior Indebtedness and (ii) with respect to any Subsidiary Guarantor, the Subsidiary Guarantees and any other Indebtedness of such Subsidiary Guarantor that specifically provides that such Indebtedness is to have the same rank as the Subsidiary Guarantees in right of payment and is not subordinated by its term in right or payment to any Indebtedness or other obligation of such Subsidiary Guarantor which is not Senior Indebtedness.

"Significant Subsidiary" means any Restricted Subsidiary that would be

a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"Stated Maturity" means, with respect to any security, the date

specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

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"Subordinated Obligation" means any Indebtedness of the Company

(whether outstanding on the Issue Date or thereafter Incurred) which is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect.

"Subsidiary" means, in respect of any Person, any corporation,

association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by

(1) such Person,

(2) such Person and one or more Subsidiaries of such Person, or

(3) one or more Subsidiaries of such Person.

"Subsidiary Guarantee" means a guarantee by a Subsidiary Guarantor of

the Company's obligations with respect to the Notes.

"Subsidiary Guarantors" means (1) each of the Company's Restricted

Subsidiaries providing guarantees under the Credit Facility on the Issue Date and (2) any Person that becomes a Restricted Subsidiary of the Company and provides a guarantee under the Credit Facility that pursuant to Section 4.16 or otherwise in the future executes a supplemental indenture in which such Restricted Subsidiary unconditionally guarantees on a senior subordinated basis the Company's obligations under the Notes and this Indenture; provided that any Person constituting a Subsidiary Guarantor as described above shall cease to constitute a Subsidiary Guarantor when its respective Subsidiary Guarantee is released in accordance with the terms of this Indenture.

"Successor Company" shall have the meaning provided in Section 5.01.

"Temporary Cash Investments" means any of the following:

(1) any investment in direct obligations of the United States of America or any agency thereof or obliga-

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tions guaranteed by the United States of America or any agency thereof,

(2) investments in time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of \$50,000,000 (or the foreign currency equivalent thereof) and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money-market fund sponsored by a registered broker dealer or mutual fund distributor,

(3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank meeting the qualifications described in clause (2) above,

(4) investments in commercial paper, maturing not more than 90 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of "P-1" (or higher) according to Moody's Investors Service, Inc. or "A-1" (or higher) according to Standard and Poor's Ratings Group, and

(5) investments in securities with maturities of six months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by Standard & Poor's Ratings Group or "A" by Moody's Investors Service, Inc.

"TIA" means the Trust Indenture Act of 1939, as amended (15 U.S.C.

Sections 77aaa-77bbb), as in effect on the date of this Indenture.

"Trust Officer" means any authorized officer of the Trustee assigned

by the Trustee to administer this Indenture,

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or in the case of a successor trustee, an authorized officer assigned to the department, division or group performing the corporation trust work of such successor and assigned to administer this Indenture.

"Trustee" means the party named as such in this Indenture until a

successor replaces it in accordance with the provisions of this Indenture and thereafter means such successor.

"Unrestricted Subsidiary" means

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided below, and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; provided, however, that either (A) the Subsidiary to be so designated has total assets of \$1,000 or less or (B) if such Subsidiary has assets greater than \$1,000, such designation would be permitted under the covenant described under Section 4.10.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that immediately after giving effect to such designation (x) the Company could Incur \$1.00 of additional Indebtedness under paragraph (a) of Section 4.13 and (y) no Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Dollar Equivalent" means with respect to any monetary amount in

a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase

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of U.S. dollars with the applicable foreign currency as published in The Wall Street Journal in the "Exchange Rates" column under the heading "Currency Trading" on the date two Business Days prior to such determination.

Except as described in Section 4.13, whenever it is necessary to determine whether the Company has complied with any covenant in this Indenture or a Default has occurred and an amount is expressed in a currency other than U.S. dollars, such amount will be treated as the U.S. Dollar Equivalent determined as of the date such amount is initially determined in such currency.

"U.S. Government Obligations" means direct obligations (or

certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer's option.

"U.S. Legal Tender" means such coin or currency of the United States

of America as at the time of payment shall be legal tender for the payment of public and private debts.

"Voting Stock" of a Person means all classes of Capital Stock or other

interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"Wholly Owned Subsidiary" means a Restricted Subsidiary all the

Capital Stock of which (other than directors' qualifying shares) is owned by the Company or one or more Wholly Owned Subsidiaries.

SECTION 1.02. Incorporation by Reference of TIA.

Whenever this Indenture refers to a provision of the TIA, such provision is incorporated by reference in, and made a part of, this Indenture. The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Notes.

"indenture security holder" means a Holder or a Noteholder.

"indenture to be qualified" means this Indenture.

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"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company or any other obligor on the Notes.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule and not otherwise defined herein have the meanings assigned to them therein.

SECTION 1.03. Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and words in the plural include the singular;
- (5) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and
- (6) reference to Sections or Articles means reference to such Section or Article in this Indenture, unless stated otherwise.

SECTION 1.04. One Class of Securities.

The Initial Notes, the Private Exchange Notes, if any, and the Exchange Notes shall vote and consent together on all matters as one class and none of the Initial Notes, the Private Exchange Notes, if any, or the Exchange Notes shall have the right to vote or consent as a separate class on any matter.

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ARTICLE TWO

THE NOTES

SECTION 2.01. Form and Dating.

(a) Provisions relating to the Initial Notes, the Private Exchange Notes and the Exchange Notes are set forth in the Rule 144A/Regulation S Appendix attached hereto (the "Appendix"), which is hereby incorporated in and

expressly made a part of this Indenture. The Initial Notes and the corresponding Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Exchange Notes, the Private Exchange Notes

and the corresponding Trustee's certificate of authentication shall be substantially in the form of Exhibit B hereto. The Notes may have notations,

legends or endorsements required by law, stock exchange rule, agreements to which the Company are subject, if any, or depository rule or usage. The Company shall approve the forms of the Notes and any notation, legend or endorsement on them. Each Note shall be dated the date of its issuance and shall show the date of its authentication.

(b) The terms and provisions contained in the Appendix and in the forms of the Notes, annexed hereto as Exhibits A and B, shall constitute, and

are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company, the Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

SECTION 2.02. Execution and Authentication; Aggregate
Principal Amount.

Two Officers, or an Officer and an Assistant Secretary, shall sign, or one Officer shall sign and one Officer or an Assistant Secretary (each of whom shall, in each case, have been duly authorized by all requisite corporate actions) shall attest to, the Notes for the Company by manual or facsimile signature.

If an Officer or Assistant Secretary whose signature is on a Note was

an Officer or Assistant Secretary at the time of such execution but no longer holds that office or position at the time the Trustee authenticates the Note, the Note shall nevertheless be valid.

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On the Issue Date, the Trustee shall authenticate and deliver \$200.0 million of 13% Series A Senior Subordinated Notes due 2009 in the form of Initial Notes. In addition, at any time, and from time to time, the Trustee shall authenticate and deliver Notes upon a written notice of the Company, for original issuance in the aggregate principal amount specified in such order for original; provided that Exchange Notes and Private Exchange Notes shall be issuable only upon the valid surrender for cancellation of such Initial Notes of a like aggregate principal amount. Any such order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee may appoint an authenticating agent (the "Authenticating Agent") reasonably acceptable to the Company to authenticate Notes. Unless otherwise provided in the appointment, an Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such Authenticating Agent. An Authenticating Agent has the same rights as an Agent to deal with the Company and Affiliates of the Company.

The Notes shall be issuable in fully registered form only, without coupons, in denominations of \$1,000 and any integral multiple thereof.

SECTION 2.03. Registrar and Paying Agent.

The Company shall maintain or designate an office or agency in accordance with Section 4.02 (which shall be located in the Borough of Manhattan in the City of New York, State of New York and which may be the office of the Trustee) where Notes may be presented or surrendered for registration of transfer or for exchange ("Registrar") and Notes may be presented or surrendered for payment ("Paying Agent"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional Paying Agent. Either the Company or any of its Affiliates may act as Paying Agent or Registrar, except that for purposes of Articles Three and Eight and Sections 4.14, 4.15 and 4.23, neither the Company nor any of

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the Subsidiary Guarantors or their respective Affiliates shall act as Paying Agent. The Company may change any Paying Agent or Registrar without notice to any Holder.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture, which agreement shall incorporate the provisions of the TIA and implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any such Agent. If the Company fails to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such.

The Company initially appoints the Trustee as Registrar and Paying Agent, until such time as the Trustee has resigned or a successor has been appointed. The Paying Agent or Registrar may resign upon 30 days notice to the Company.

SECTION 2.04. Paying Agent To Hold Assets in Trust.

The Company shall require each Paying Agent (other than the Trustee) to agree in writing that each Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all assets held by the Paying Agent for the payment of principal of, or interest on, the Notes (whether such assets have been distributed to it by the Company, the Subsidiary Guarantors or any other obligor on the Notes), and the Company and the Paying Agent shall notify the Trustee of any Default by the Company or the Subsidiary Guarantors (or any other obligor on the Notes) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and to account for any assets disbursed. The Trustee may, and upon direction of a majority of the Holders shall, at any time during the continuance of any payment

Default, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company, the Subsidiary Guarantors or any other obligor on the Notes to the Paying Agent, the Paying Agent shall have no further liability for such assets.

SECTION 2.05. Noteholder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders, and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Reg-

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istrar, the Company shall furnish or cause the Registrar to furnish to the Trustee before each Record Date and at such other times as the Trustee may request in writing a list as of such date and in such form as the Trustee may reasonably require of the names and addresses of the Holders, which list may be conclusively relied upon by the Trustee and the Company shall otherwise comply with TIA Section 312(a).

SECTION 2.06. Replacement Notes.

If a mutilated Note is surrendered to the Trustee or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, subject to the terms of the next succeeding sentence, the Company shall issue and the Trustee shall authenticate a replacement Note if the Trustee's reasonable requirements for replacement Notes are met. If required by the Trustee or the Company, such Holder must provide an affidavit of lost certificate and an indemnity bond or other indemnity, sufficient in the judgment of both the Company and the Trustee, to protect the Company, the Trustee, any Agent or any Authenticating Agent from any loss which any of them may suffer if a Note is replaced. The Company and the Trustee may charge such Holder for their out-of-pocket expenses in replacing a Note, including reasonable fees and expenses of counsel, and for any tax that may be imposed in replacing such Notes. Every replacement Note shall constitute an additional obligation of the Company and shall be entitled to all benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

SECTION 2.07. Outstanding Notes.

Notes outstanding at any time are all the Notes that have been authenticated by the Trustee except those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. Subject to the provisions of Section 2.08, a Note does not cease to be outstanding because the Company, any Subsidiary Guarantor or any of their respective Affiliates holds the Note.

If a Note is replaced pursuant to Section 2.06 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement thereof pursuant to Section 2.06.

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Except as otherwise provided in Article Eight of this Indenture, if on a Redemption Date or the Maturity Date the Paying Agent holds U.S. Legal Tender or U.S. Government Obligations sufficient to pay all of the principal and interest due on the Notes payable on that date and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture, then on and after that date such Notes shall cease to be outstanding and interest on them shall cease to accrue.

SECTION 2.08. Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver, consent or notice, Notes owned by the Company, any Subsidiary Guarantor or any of their respective Affiliates shall be considered as though they are not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver, consent or notice, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so considered. The Company shall promptly give the Trustee written notice upon the acquisition by the Company, any Subsidiary Guarantor or any of their respective Affiliates of any Notes.

SECTION 2.09. Temporary Notes.

Until definitive Notes are ready for delivery, the Company may prepare and the Trustee shall, upon receipt of a written order by the Company, authenticate temporary Notes. The Company's order to authenticate shall specify the amount of temporary Notes to be authenticated and the date on which the temporary Notes are to be authenticated. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Company consider appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate upon receipt of a written order of the Company pursuant to Section 2.02 definitive Notes in exchange for, and upon surrender of, temporary Notes. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Notes authenticated and delivered hereunder.

SECTION 2.10. Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for

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transfer, exchange or payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent, and no one else, shall cancel and, at the written direction of the Company, shall dispose of all Notes surrendered for transfer, exchange, payment or cancellation. Subject to Section 2.06, the Company may not issue new Notes to replace Notes that it has paid or delivered to the Trustee for cancellation. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.10.

SECTION 2.11. Defaulted Interest.

If the Company defaults in a payment of interest on the Notes (without regard to any grace period therefor), it shall pay the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest to the Persons who are Holders on a subsequent special record date, which date shall be no less than 10 days preceding the date fixed by the Company for the payment of defaulted interest or the next succeeding Business Day if such date is not a Business Day. At least 15 days before the subsequent special record date, the Company shall mail to each Holder, as of a recent date selected by the Company, with a copy to the Trustee, a notice that states the subsequent special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

Alternatively, the Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee and the Paying Agent of the proposed payment pursuant to this clause, such manner shall be deemed practicable by the Trustee and the Paying Agent.

SECTION 2.12. CUSIP Number.

The Company in issuing the Notes may use "CUSIP" numbers, and if so, the Trustee shall use such CUSIP numbers in notices of redemption or exchange as a convenience to Holders; provided that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of such CUSIP numbers printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers

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printed on the Notes. The Company shall promptly notify the Trustee of any change in a CUSIP number.

SECTION 2.13. Deposit of Moneys.

Prior to 9:00 a.m. New York City time on each Interest Payment Date and on the Maturity Date, the Company shall deposit with the Paying Agent in immediately available funds U.S. Legal Tender sufficient to make cash payments, if any, due on such Interest Payment Date or Maturity Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such Interest Payment Date or Maturity Date, as the case may be.

ARTICLE THREE

REDEMPTION

SECTION 3.01. Notices to Trustee.

If the Company elects to redeem Notes pursuant to Section 3.07 of this Indenture and Paragraph 5 of the Notes, it shall notify the Trustee and the Paying Agent in writing of the Redemption Date and the principal amount of the Notes to be redeemed.

The Company shall give each notice provided for in this Section 3.01 at least 45 days before the Redemption Date (unless a shorter notice period shall be satisfactory to the Trustee, as evidenced in a writing signed on behalf of the Trustee), together with an Officers' Certificate stating that such redemption shall comply with the conditions contained herein and in the Notes.

SECTION 3.02. Selection of Notes To Be Redeemed.

If fewer than all of the Notes are to be redeemed, selection of the Notes to be redeemed will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or in such other fair and reasonable manner chosen at the discretion of the Trustee; provided, however, that if a partial redemption is made with the proceeds of a Public Equity Offering, selection of the Notes or portion thereof for redemption shall be made by

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the Trustee only on a pro rata basis, unless such method is otherwise prohibited.

The Trustee shall make the selection from the Notes outstanding and not previously called for redemption and shall promptly notify the Company in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes in denominations of \$1,000 may be redeemed only in whole. The Trustee may select for redemption portions (equal to \$1,000 or any integral multiple thereof) of the principal of Notes that have denominations larger than \$1,000. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

SECTION 3.03. Notice of Redemption.

At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail or cause to be mailed a notice of redemption by first class mail, postage prepaid, to each Holder whose Notes are to be redeemed at its registered address, with a copy to the Trustee and any Paying Agent. At the Company's written request no less than 35 days prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee), the Trustee shall give the notice of redemption in the Company's name and at the Company's expense.

Each notice for redemption shall identify the Notes to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price and the amount of accrued interest, if any, to be paid;
- (3) the name and address of the Paying Agent;
- (4) the subparagraph of the Notes and/or Section of this Indenture pursuant to which such redemption is being made;
- (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price plus accrued interest, if any;
- (6) that, unless the Company defaults in making the redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date,

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and the only remaining right of the Holders of such Notes is to receive payment of the Redemption Price plus accrued interest, if any, upon surrender to the Paying Agent of the Notes redeemed;

(7) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the Redemption Date, and upon surrender of such Note, a new Note or Notes in the aggregate principal amount equal to the unredeemed portion thereof will be issued;

(8) if fewer than all the Notes are to be redeemed, the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption and, if the

redemption is not made pro rata, the identification of the particular Notes (or portion thereof) to be redeemed; and

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

SECTION 3.04. Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price plus accrued interest, if any. Upon surrender to the Trustee or Paying Agent, such Notes called for redemption shall be paid at the Redemption Price plus accrued interest to the Redemption Date payable thereon, if any. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.05. Deposit of Redemption Price.

On or before 9:00 a.m. New York City time on the Redemption Date, the Company shall deposit with Trustee or Paying Agent in immediately available funds U.S. Legal Tender sufficient to pay the Redemption Price plus accrued interest, if any, of all Notes to be redeemed on that date (other than Notes or portions of Notes called for redemption which have been delivered by the Company to the Trustee for cancellation). The Trustee or Paying Agent shall promptly return to the Company any U.S. Legal Tender so deposited which is not required for that purpose, except with respect to monies owed as obligations to the Trustee pursuant to Article Seven.

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If the Company complies with the preceding paragraph, then, unless the Company defaults in the payment of such Redemption Price plus accrued interest, if any, interest on the Notes to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Notes are presented for payment.

SECTION 3.06. Notes Redeemed in Part.

Upon surrender of a Note that is to be redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder a new Note or Notes equal in principal amount to the unredeemed portion of the Note surrendered.

SECTION 3.07. Optional Redemption.

The Notes shall not be redeemable at the Company's option except as set forth in the optional redemption provisions set forth in Paragraph 5 of the Notes.

ARTICLE FOUR

COVENANTS

SECTION 4.01. Payment of Notes.

The Company shall pay or cause to be paid the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. An installment of principal of or interest on the Notes shall be considered paid on the date it is due if the Trustee or Paying Agent (other than the Company, any Subsidiary Guarantor or any of their respective Affiliates) holds on that date U.S. Legal Tender designated for and sufficient to pay the installment in full and is not prohibited from paying such money to the Holders pursuant to the terms of this Indenture.

SECTION 4.02. Maintenance of Office or Agency.

The Company shall maintain in the Borough of Manhattan, the City of New York, an the office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company or the Subsidiary Guarantors in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the

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location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or

shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.02.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such additional designations, provided that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the corporate trust office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

SECTION 4.03. Corporate Existence.

Except as otherwise permitted by Article Five, the Company shall do or shall cause to be done, at its own cost and expense, all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, limited liability company or partnership or other existence of each Restricted Subsidiary in accordance with the respective organizational documents of each of them (as the same may be amended from time to time) and the material rights (charter and statutory) and franchises of the Company and the Restricted Subsidiaries; provided, however, that the Company or any Restricted Subsidiary shall not be required to preserve any right or franchise, or the corporate, limited liability company, partnership or other existence of any Restricted Subsidiary, if the Board of Directors of the Company shall in its sole discretion determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

SECTION 4.04. Payment of Taxes and Other Claims.

The Company shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges (including withholding taxes and any penalties, interest and

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additions to taxes) levied or imposed upon it or any of its Restricted Subsidiaries or properties of it or any of its Restricted Subsidiaries and (ii) all lawful claims for labor, materials and supplies that, if unpaid, might by law become a Lien upon the property of it or any of its Restricted Subsidiaries; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings properly instituted and diligently conducted for which reserves, to the extent required under and in accordance with GAAP, have been taken.

SECTION 4.05. Maintenance of Properties and Insurance.

(a) The Company shall, and shall cause each of its Restricted Subsidiaries to, maintain its or their material properties in good working order and condition (subject to ordinary wear and tear) and make all necessary repairs, renewals, replacements, additions, betterments and improvements thereto; provided, however, that nothing in this Section 4.05 shall prevent the Company or any of its Restricted Subsidiaries from discontinuing the operation and maintenance of any of its or their properties, if such discontinuance is, in the reasonable good faith judgment of the Company, desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

(b) The Company shall provide, or cause to be provided, for itself and each of its Restricted Subsidiaries, insurance (including appropriate self-insurance) against loss or damage of the kinds that, in the reasonable, good faith judgment of the Board of Directors of the Company is adequate and appropriate for the conduct of the business of the Company and its Restricted Subsidiaries.

SECTION 4.06. Compliance Certificate; Notice of Default.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company and the Subsidiary Guarantors have kept, observed, performed and fulfilled their obligations under this Indenture and

further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge, neither the Company nor any Subsidiary

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Guarantor is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company or such Subsidiary Guarantors is taking or proposes to take with respect thereto).

SECTION 4.07. Compliance with Laws.

The Company shall comply, and shall cause each of its Restricted Subsidiaries to comply, with all applicable statutes, rules, regulations, orders and restrictions of the United States of America, all states and municipalities thereof, and of any governmental department, commission, board, regulatory authority, bureau, agency and instrumentality of the foregoing, in respect of the conduct of its and their respective businesses and the ownership of its and their respective properties, except for such noncompliances as are not in the aggregate reasonably likely to have a material adverse effect on the financial condition or results of operations of the Company and its Restricted Subsidiaries, taken as a whole.

SECTION 4.08. SEC Reports.

Whether or not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the SEC (unless such filing is not permitted under the Exchange Act) within the time periods specified in the SEC's rules and regulations and provide the Trustee and the holders of the Notes, within 15 days thereafter, with such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections.

In addition, for so long as any Notes remain outstanding, the Company shall furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act, and, to any beneficial owner of Notes, if not obtainable from the SEC, information of the type that would be filed with the SEC pursuant to the foregoing provisions, upon the request of any such holder.

SECTION 4.09. Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead,

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or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenant that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 4.10. Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to make a Restricted Payment if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default shall have occurred and be continuing (or would result therefrom);

(2) the Company is not able to Incur an additional \$1.00 of Indebtedness pursuant to paragraph (a) of Section 4.13 or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date would exceed the sum of (without duplication):

(A) 50% of the Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the fiscal quarter immediately following the fiscal quarter during which the

Issue Date occurred to the end of the most recent fiscal quarter ending at least 45 days prior to the date of such Restricted Payment for which the financial statements have either been included in a report filed with the SEC or filed with the Trustee (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit);

(B) 100% of the aggregate Net Cash Proceeds received by the Company from the issuance or sale of its Capital Stock (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a Subsidiary of the Company and other than

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an issuance or sale to an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees);

(C) 100% of the aggregate Net Cash Proceeds received by the Company from the issue, sale or exercise of its Capital Stock (other than Disqualified Stock) to or by an employee stock ownership plan subsequent to the Issue Date; provided, however, that if such employee stock ownership plan Incurs any Indebtedness to finance the purchase or exercise of such Capital Stock, such Net Cash Proceeds shall be included only to the extent that any such proceeds are equal to any increase in the Consolidated Net Worth resulting from principal repayments made by such employee stock ownership plan with respect to Indebtedness Incurred by it to finance the purchase or exercise of such Capital Stock;

(D) the amount by which Indebtedness of the Company or its Restricted Subsidiaries (other than Indebtedness owed to the Company or a Restricted Subsidiary) is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company or its Restricted Subsidiary convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair value of any other property, distributed by the Company upon such conversion or exchange); and

(E) an amount equal to the sum of (1) the net reduction in Investments in Unrestricted Subsidiaries resulting from dividends, repayments of loans or advances or other transfers of assets, in each case to the Company or any Restricted Subsidiary from Unrestricted Subsidiaries, and (2) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of an Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary; provided, however, that the foregoing sum shall not exceed, in the case of any Unrestricted Subsidiary, the amount of Investments previously made (and treated as a Restricted Payment) by the Company

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or any Restricted Subsidiary in such Unrestricted Subsidiary.

(b) The provisions of the foregoing paragraph (a) shall not prohibit:

(1) any acquisition of any Capital Stock or Subordinated Obligation of the Company made out of the proceeds of the substantially concurrent sale of, or made by exchange for, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Company or an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees); provided, however, that (A) such acquisition of Capital Stock shall be excluded in the calculation of the amount of Restricted Payments and (B) the Net Cash Proceeds from such sale shall be excluded from the calculation of amounts under clause (3)(B) of paragraph (a) above;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Obligations made by exchange for, or out of the proceeds of the substantially concurrent sale of, Indebtedness of the Company which is permitted to be Incurred pursuant to Section 4.13; provided, however, that such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value shall be excluded in the calculation of the amount of Restricted Payments;

(3) dividends paid within 60 days after the date of declaration thereof if at such date of declaration such dividend would have complied with this covenant, provided, however, that at the time of payment of such dividend, no other Default shall have occurred and be continuing (or result therefrom); provided, further, however, that such dividend shall be included in the calculation of the amount of Restricted Payments;

(4) the acquisition by the Company of shares of common stock of the

Company to be contributed by the Company on behalf of its employees to employee benefit programs; provided that in each such case the amount to be purchased shall not exceed 5% of the compensation of such employee in any fiscal year; provided, further, however, that such

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acquisitions shall be excluded in the calculation of the amount of Restricted Payments; or

(5) the Company or any Restricted Subsidiary of the Company from making Restricted Payments, in addition to Restricted Payments permitted by clause (1) through (4) above, not in excess of \$5.0 million in the aggregate after the date of this Indenture.

SECTION 4.11. Limitation on Restrictions on Distributions from Restricted Subsidiaries.

The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) pay dividends or make any other distributions on its Capital Stock to the Company or a Restricted Subsidiary or pay any Indebtedness owed to the Company or any other Restricted Subsidiary, (b) make any loans or advances to the Company or (c) transfer any of its property or assets to the Company or any other Restricted Subsidiary, except:

(1) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, including the Credit Facility;

(2) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Indebtedness Incurred by such Restricted Subsidiary on or prior to the date on which such Restricted Subsidiary was acquired by the Company (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company) and outstanding on such date;

(3) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (1) or (2) of this covenant or this clause (3) or contained in any amendment to an agreement referred to in clause (1) or (2) of this covenant or this clause (3); provided, however, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such refinancing agreement or amendment are no less favorable to the

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Noteholders than encumbrances and restrictions with respect to such Restricted Subsidiary contained in such predecessor agreements;

(4) any such encumbrance or restriction consisting of customary non-assignment provisions in leases governing leasehold interests to the extent such provisions restrict the transfer of the lease or the property leased hereunder;

(5) in the case of clause (c) above, restrictions contained in security agreements or mortgages securing Indebtedness of a Restricted Subsidiary to the extent such restrictions restrict the transfer of the property subject to such security agreements or mortgages; and

(6) any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition.

SECTION 4.12. Limitation on Transactions with Affiliates.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with any Affiliate of the Company (an "Affiliate Transaction") unless the terms thereof

(1) are no less favorable to the Company or such Restricted Subsidiary than those that could be obtained at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of

\$2.0 million, (x) are set forth in writing and (y) have been approved by a majority of the members of the Board of Directors having no personal stake in such Affiliate Transaction; and

(3) if such Affiliate Transaction involves an amount in excess of \$10.0 million, have been determined by a nationally recognized investment banking firm to be fair, from a financial standpoint, to the Company and its Restricted Subsidiaries.

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(b) The provisions of the foregoing paragraph (a) shall not prohibit:

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- (1) any Restricted Payment permitted to be paid pursuant to Section
 - (2) any employment agreement or employee benefit arrangement with any officer or director entered into in the ordinary course of business and consistent with past practice;
 - (3) the payment of reasonable fees to directors of the Company and its Restricted Subsidiaries who are not employees of the Company or its Restricted Subsidiaries;
 - (4) any Affiliate Transaction between the Company and a Wholly Owned Subsidiary or between Wholly Owned Subsidiaries;
 - (5) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company;
 - (6) reasonable and customary indemnification of officers and directors of the Company or any Restricted Subsidiary pursuant to bylaws, statutory provisions or indemnification agreements;
 - (7) purchases and sales of goods and services in the ordinary course of business on terms customary in the industry;
 - (8) any transaction pursuant to agreements in effect on the Issue Date; and
 - (9) written agreements entered into or assumed in connection with acquisitions of other businesses with persons who were not Affiliates prior to such transactions.

SECTION 4.13. Limitation on Indebtedness.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness; provided, however, that the Company and the Subsidiary Guarantors may Incur Indebtedness if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, no Default or Event of Default has occurred and is continuing and the Consolidated Coverage Ratio exceeds 2.25 to 1.0.

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(b) Notwithstanding the foregoing paragraph (a), so long as no Default or Event of Default has occurred and is continuing, the Company and the Restricted Subsidiaries may Incur any or all of the following Indebtedness:

(1) Indebtedness of the Company and any borrower under the Credit Facility incurred pursuant to the Credit Facility; provided, however, that, after giving effect to any such Incurrence, the aggregate principal amount of such Indebtedness then outstanding does not exceed (a) in the case of the term loan facilities, \$240.0 million at any one time outstanding, less the sum of all permanent repayments or reductions in commitments (so long as and to the extent that any required payments in connection therewith are actually made) theretofore made with respect to such Indebtedness, and (b) in the case of the revolving loan facility, the greater of (i) \$100.0 million at any one time outstanding and (ii) the sum of (a) 50% of the book value of the inventory of the Company and its Restricted Subsidiaries and (b) 85% of the book value of the accounts receivable of the Company and its Restricted Subsidiaries;

(2) Indebtedness owed to and held by the Company or a Wholly Owned Subsidiary; provided, however, that: (A) any subsequent issuance or transfer of any Capital Stock which results in any such Wholly Owned Subsidiary ceasing to be a Wholly Owned Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or a Wholly Owned Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon, and (B) if the Company is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations with respect to the Notes;

(3) the Notes, the Exchange Notes and the Private Exchange Notes and the Subsidiary Guarantees;

(4) Indebtedness of the Company of any of its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness described in clause (1), (2) or (3) of this Section 4.13(b)) other than Indebtedness to be repaid from the proceeds of the sale of the Notes and the Credit Facility as described in the Offering Circular;

(5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on or prior to the date on which such Re

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stricted Subsidiary was acquired by the Company or another Restricted Subsidiary (other than Indebtedness Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company or other Restricted Subsidiary); provided, however, that on the date of such acquisition, and after giving effect thereto, the Company would have been able to Incur at least \$1.00 of additional Indebtedness pursuant to clause (a) above;

(6) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to paragraph (a) above or pursuant to clause (3), (4) or (5) above or this clause (6); provided, however, that to the extent such Refinancing Indebtedness directly or indirectly Refinances Indebtedness of a Subsidiary Incurred pursuant to clause (5) above, such Refinancing Indebtedness shall be Incurred only by such Subsidiary;

(7) Indebtedness consisting of Permitted Interest Rate or Currency Price Agreements;

(8) Indebtedness consisting of guarantees provided by the Company of Indebtedness of current employees incurred to purchase Capital Stock of the Company pursuant to the Company's employee stock purchase plan in an amount not to exceed \$6.0 million at any one time outstanding;

(9) Indebtedness of Foreign Restricted Subsidiaries in an aggregate principal amount which, together with all other Indebtedness of such Foreign Restricted Subsidiaries outstanding on the date of such Incurrence does not exceed \$15.0 million; provided, that the Indebtedness outstanding under this clause (9) when added to any Indebtedness outstanding pursuant to clause (10) below does not exceed \$20.0 million; and

(10) Indebtedness of the Company in an aggregate principal amount which, together with all other Indebtedness of the Company outstanding on the date of such Incurrence (other than Indebtedness permitted by clauses (1) through (9) above or paragraph (a)) does not exceed \$15.0 million; provided, that the Indebtedness outstanding under this clause (10) when added to any Indebtedness out-

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standing pursuant to clause (9) above does not exceed \$20.0 million.

(c) Notwithstanding the foregoing, none of the Company or any Subsidiary Guarantor shall Incur any Indebtedness pursuant to the foregoing paragraph (b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company or any Subsidiary Guarantor unless such Indebtedness shall be subordinated to the Notes or the applicable Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with the foregoing covenant, (1) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, the Company, in its sole discretion, will classify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of the above clauses and (2) an item of Indebtedness may be divided and classified in more than one of the types of Indebtedness described above.

(e) For purposes of determining compliance with any U.S. dollar denominated restriction on the Incurrence of Indebtedness where the Indebtedness Incurred is denominated in a different currency, the amount of such Indebtedness will be the U.S. Dollar Equivalent determined on the date of the Incurrence of such Indebtedness, provided, however, that if any such Indebtedness denominated in a different currency is subject to a Permitted Interest Rate or Currency Agreement with respect to U.S. dollar covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in U.S. dollar will be as provided in such Permitted Interest Rate or Currency Agreement. The principal amount of any Refinancing Indebtedness Incurred in the same currency as the Indebtedness being Refinanced will be the

U.S. Dollar Equivalent of the Indebtedness Refinanced, except to the extent that (i) such U.S. Dollar Equivalent was determined based on a Permitted Interest Rate or Currency Agreement, in which case the Refinancing Indebtedness will be determined in accordance with the preceding sentence, and (ii) the principal amount of the Refinancing Indebtedness exceeds the principal amount of the Indebtedness being Refinanced, in which case the U.S. Dollar Equivalent of such excess will be determined on the date such Refinancing Indebtedness is Incurred.

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SECTION 4.14. Change of Control.

(a) Upon a Change of Control, each Holder shall have the right to require that the Company repurchase all or any part of such Holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, thereon to the date of purchase, in accordance with the terms contemplated in Section 4.14(b).

(b) Within 30 days following any Change of Control, unless the Company shall have provided an irrevocable notice of redemption to the Trustee with respect to a redemption of all the outstanding Notes at a time when such redemption is permitted under this Indenture pursuant to the provisions of Sections 3.03 and 3.04, the Company shall mail a notice to each Holder with a copy to the Trustee (the "Change of Control Offer") stating:

(1) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount (the "Change of Control Purchase Price") thereof plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest on the relevant interest payment date);

(2) the circumstances and relevant facts regarding such Change of Control (including information with respect to pro forma historical income, cash flow and capitalization after giving effect to such Change of Control);

(3) the repurchase date (the "Change of Control Purchase Date") (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and

(4) the instructions determined by the Company, consistent with the covenant described hereunder, that a Holder must follow in order to have its Notes purchased.

The Company shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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(c) On or before the Change of Control Purchase Date, the Company shall, to the extent lawful, (i) accept for payment Notes or portions thereof properly tendered and not validly withdrawn pursuant to the Change of Control Offer (together with the appropriate form as provided for in Exhibit A or B),

(ii) deposit with the Trustee or Paying Agent an amount in U.S. Legal Tender sufficient to pay the Change of Control Purchase Price (together with accrued and unpaid interest, if any), of all Notes so tendered and (iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate listing the Notes or portions thereof being purchased by the Company. The Trustee or Paying Agent promptly will pay the Holders of Notes so accepted an amount equal to the Change of Control Purchase Price (together with accrued and unpaid interest, if any), and the Trustee promptly will authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be delivered promptly by the Company to the Holders thereof.

(d) On the Change of Control Purchase Date, all Notes purchased by the Company under this Section 4.14 shall be delivered to the Trustee for cancellation, and the Company shall pay or cause to be paid the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto.

(e) At the time the Company delivers Notes to the Trustee which are to be accepted for purchase, the Company shall also deliver an Officers' Certificate stating that such Notes are to be accepted by the Company pursuant

to and in accordance with the terms of this Section 4.14. A Note shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or delivers payment therefor to the surrendering Holder.

(f) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section by virtue thereof.

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SECTION 4.15. Limitation on Sales of Assets and
Subsidiary Stock.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary receives consideration at the time of such Asset Disposition at least equal to the fair market value (including the value of all non-cash consideration), as determined in good faith by the Board of Directors, of the shares and assets subject to such Asset Disposition and at least 85% of the consideration thereof received by the Company or such Restricted Subsidiary is in the form of cash or cash equivalents and

(2) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company (or such Restricted Subsidiary, as the case may be):

(A) first, to either (x) the extent the Company elects (or is required by the terms of any Indebtedness), to prepay, repay, redeem or purchase (and permanently reduce the commitments thereunder) Senior Indebtedness within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash or (y) to the extent the Company elects, to acquire Additional Assets within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash; provided that, with respect to any Net Available Cash from an Asset Disposition of accounts receivable in conjunction with an Accounts Receivable Facility, the Company shall be required to apply such Net Available Cash first to prepay, repay, redeem or repurchase (and permanently reduce the commitments thereunder) Senior Indebtedness consisting of term loans under the Credit Facility and then otherwise as provided elsewhere herein (including clause (y) of this paragraph (A));

(B) second, to the extent of the balance of such Net Available Cash after application in accordance with clause (A) above, to make an offer to the holders of the Notes (and to holders of other Senior Subordinated Indebtedness designated by the Company) to purchase Notes (and such other Senior Subordinated

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Indebtedness) pursuant to and subject to the conditions contained in this Indenture; and

(C) third, to the extent of the balance of such Net Available Cash after application in accordance with clause (A) or (B) above, to any other application or use not prohibited by this Indenture;

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (A) above, the Company or such Restricted Subsidiary shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased.

Notwithstanding the foregoing provisions of this Section, the Company and the Restricted Subsidiaries shall not be required to apply any Net Available Cash in accordance with this Section except to the extent that the aggregate Net Available Cash from all Asset Dispositions which are not applied in accordance with this Section exceeds \$10.0 million. Pending application of Net Available Cash pursuant to this Section, such Net Available Cash shall be invested in Permitted Investments.

For the purposes of this Section 4.15, the following are deemed to be cash or cash equivalents:

(1) the assumption of Indebtedness of the Company or any Restricted Subsidiary and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition, and

(2) securities received by the Company or any Restricted Subsidiary from the transferee that are promptly converted by the Company or such Restricted Subsidiary into cash.

(b) In the event of an Asset Disposition that requires the purchase of the Notes (and other Senior Subordinated Indebtedness) pursuant to clause (a) (2) (B) above, the Company will be required to purchase Notes tendered pursuant to an offer by the Company for the Notes (and other Senior Subordinated Indebtedness) at a purchase price of 100% of their principal amount (without premium) plus accrued but unpaid interest (or, in respect of such other Senior Subordinated Indebtedness, such lesser price, if any, as may be provided for by the terms of

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such Senior Subordinated Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth below (the "Asset Disposition Offer"). If the aggregate purchase price of Notes (and any other Senior Subordinated Indebtedness) tendered pursuant to such offer is less than the Net Available Cash allotted to the purchase thereof, the Company will be required to apply the remaining Net Available Cash in accordance with clause (a) (2) (C) above. The Company shall not be required to make such an offer to purchase Notes (and other Senior Subordinated Indebtedness) pursuant to this Section 4.15 if the Net Available Cash available therefor is less than \$10.0 million (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with respect to the Net Available Cash from any subsequent Asset Disposition).

(c) With respect to any Asset Disposition Offer effected pursuant to this Section 4.15, to the extent the aggregate principal amount of Notes tendered pursuant to such Asset Disposition Offer exceeds the Net Available Cash to be applied to the repurchase thereof, such Notes shall be purchased pro rata based on the aggregate principal amount of such Notes tendered by each Holder.

Notice of an Asset Disposition shall be mailed by the Company not more than 20 days after the obligation to make such Asset Disposition Offer arises to the Holders of Notes at their last registered addresses with a copy to the Trustee and the Paying Agent. The Asset Disposition Offer shall remain open from the time of mailing for at least 30 Days or such longer period as may be required by applicable law. The notice, which shall govern the terms of the Asset Disposition Offer, shall include such disclosures as are required by law and shall state:

(i) that an Asset Disposition has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 100% of the principal amount (the "Asset Disposition Purchase Price") thereof plus accrued and unpaid interest, if any, thereon to the date of the purchase (subject to proration as described above)

(ii) the circumstances and relevant facts regarding such Asset Disposition;

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(iii) the purchase date (the "Asset Disposition Purchase Date") (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed);

(iv) the instructions determined by the Company, consistent with the covenant described hereunder, that a Holder must follow in order to have its Notes purchased; and

(v) information concerning the business of the Company, the most recent annual and quarterly reports of the Company filed with the SEC pursuant to the Exchange Act (or, if the Company is not permitted to file any such reports with the SEC, the comparable reports prepared pursuant to Section 4.08), a description of material developments in the Company's business, information with respect to pro forma historical financial position and results of operations after giving effect to such Asset Disposition and such other information concerning the circumstances and relevant facts regarding such Asset Disposition and Asset Disposition Offer as would, in the good faith judgment of the Company, be material to a Holder in connection with the decisions of such Holder as to whether or not it should tender Notes pursuant to the Asset Disposition Offer.

(d) On or before the Asset Disposition Purchase Date, the Company shall, to the extent lawful, (i) accept for payment (subject to proration as

described above) Notes or portions thereof properly tendered and not validly withdrawn pursuant to the Asset Disposition Offer (together with the appropriate form as provided for in Exhibit A or B), (ii) deposit with the Trustee or Paying

Agent an amount in U.S. Legal Tender sufficient to pay the Asset Disposition Purchase Price (together with accrued and unpaid interest, if any), of all Notes so tendered and (iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate listing the Notes or portions thereof being purchased by the Company. The Trustee or Paying Agent promptly will pay the Holders of Notes so accepted an amount equal to the Asset Disposition Purchase Price (together with accrued and unpaid interest, if any), and the Trustee promptly will authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted will be delivered promptly by the Company to the Holders thereof.

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(e) On the Asset Disposition Purchase Date, all Notes purchased by the Company under this Section 4.15 shall be delivered to the Trustee for cancellation, and the Company shall pay or cause to be paid the Asset Disposition Purchase Price plus accrued and unpaid interest, if any, to the Holders entitled thereto.

(f) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section by virtue thereof.

SECTION 4.16. Future Subsidiary Guarantors.

If the Company or any of its Restricted Subsidiaries transfers or causes to be transferred, in one transaction or a series of related transactions, any property to any Restricted Subsidiary that provides a guarantee under the Credit Facility and that is not a Subsidiary Guarantor, or if the Company or any of its Restricted Subsidiaries shall organize, acquire or otherwise invest in another Restricted Subsidiary that provides a guarantee under the Credit Facility, then such transferee or acquired or other Restricted Subsidiary shall (1) by a supplemental indenture executed and delivered to the Trustee, in form satisfactory to the Trustee, unconditionally guarantee on a senior subordinated basis all of the Company's obligations under the Notes and this Indenture; and (2) deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such supplemental indenture complies with this Indenture. Thereafter, such Restricted Subsidiary shall be a Subsidiary Guarantor for all purposes of this Indenture.

SECTION 4.17. Limitation on Liens.

The Company shall not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Liens of any kind against or upon any of their respective property or assets, or any proceeds, income or profit therefrom which secure Senior Subordinated Indebtedness or Subordinated Obligations, unless:

(1) in the case of Liens securing Subordinated Obligations, the Notes are secured by a Lien on such property,

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assets, proceeds, income or profit that is senior in priority to such Liens at least to the same extent that the Notes are subordinated to Senior Indebtedness; and

(2) in the case of Liens securing Senior Subordinated Indebtedness, the Notes are equally and ratably secured by a Lien on such property, assets, proceeds, income or profit.

SECTION 4.18. Limitation on the Sale or Issuance of Capital Stock of Restricted Subsidiaries.

The Company shall not sell or otherwise dispose of any Capital Stock of a Restricted Subsidiary, and shall not permit any Restricted Subsidiary, directly or indirectly, to issue or sell or otherwise dispose of any of its Capital Stock except:

(1) to the Company or a Wholly Owned Subsidiary;

(2) directors' qualifying shares or shares required by applicable law

to be held by a Person other than the Company or a Restricted Subsidiary;

(3) if, immediately after giving effect to such issuance, sale or other disposition, neither the Company nor any of its Subsidiaries own any Capital Stock of such Restricted Subsidiary; or

(4) if, immediately after giving effect to such issuance, sale or other disposition, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any investment in such Person remaining after giving effect thereto would have been permitted to be made under the covenant described under Section 4.10 if made on the date of such issuance sale or other disposition.

SECTION 4.19. Prohibition on Incurrence of Senior Subordinated Debt.

Neither the Company nor any Subsidiary Guarantor will incur or suffer to exist Indebtedness that is senior in right of payment to the Notes or such Subsidiary Guarantor's Subsidiary Guarantee and subordinate in right of payment to any other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be.

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SECTION 4.20. Limitation on Sale/Leaseback Transactions.

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale/Leaseback Transaction with respect to any property unless:

(1) the Company or such Restricted Subsidiary would be entitled to (A) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to Section 4.13 and (B) create a Lien on such property securing such Attributable Debt without equally and ratably securing the Notes pursuant to Section 4.17;

(2) the net proceeds received by the Company or any Restricted Subsidiary in connection with such Sale/Leaseback Transaction are at least equal to the fair value (as determined by the Board of Directors) of such property; and

(3) the Company applies the proceeds of such transaction in compliance with Section 4.15.

SECTION 4.21. Limitation of Guarantees by Restricted Subsidiaries.

The Company shall not permit any of its Restricted Subsidiaries, directly or indirectly, by way of the pledge of any intercompany note or otherwise, to assume, guarantee or in any other manner become liable with respect to any Indebtedness of the Company (other than Indebtedness under Permitted Interest Rate or Currency Agreements) unless, in any such case:

(1) such Restricted Subsidiary executes and delivers a supplemental indenture to this Indenture, providing a guarantee of payment of the Notes by such Restricted Subsidiary, and

(2) (a) if any such assumption, guarantee or other liability of such Restricted Subsidiary is provided in respect of Senior Indebtedness, the guarantee or other instrument provided by such Restricted Subsidiary in respect of such Senior Indebtedness may be superior to such guarantee of the Notes pursuant to subordination provisions no less favorable to the Holders of the Notes than those contained in this Indenture and (b) if such assumption, guarantee or other liability of such Restricted Subsidiary is provided in respect of Indebtedness that is expressly subordinated

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to the Notes, the guarantee or other instrument provided by such Restricted Subsidiary in respect of such subordinated Indebtedness shall be subordinated to such guarantee at least to the same extent that the Notes are subordinated to Senior Indebtedness.

Notwithstanding the foregoing, any such Subsidiary Guarantee by a Restricted Subsidiary of the Notes shall provide by its terms that it shall be automatically and unconditionally released and discharged, without any further action required on the part of the Trustee or any Holder, upon:

(1) the unconditional release of such Restricted Subsidiary from its liability in respect of the Indebtedness in connection with which such Subsidiary Guarantee was executed and delivered pursuant to the preceding paragraph;

(2) any sale or other disposition (by merger or otherwise) to any

Person which is not a Restricted Subsidiary of the Company of all of the Company's Capital Stock in, or all or substantially all of the assets of, such Restricted Subsidiary; provided that (a) such sale or disposition of such Capital Stock or assets is otherwise in compliance with the terms of this Indenture and (b) such assumption, guarantee or other liability of such Restricted Subsidiary has been released by the holders of the other Indebtedness of this Company so guaranteed;

(3) the legal defeasance of the Notes as described in Article Eight; and

(4) such Restricted Subsidiary being designated as an Unrestricted Subsidiary as described under the definition of "Unrestricted Subsidiary."

SECTION 4.22. Payments for Consent.

The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

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SECTION 4.23. Excess Cash Flow Repurchase Offer.

(a) If the Company has Excess Cash Flow for any fiscal year (commencing with fiscal 2001), the Company shall apply an amount equal to 50% of the Excess Cash Flow in such fiscal year:

(1) first, to the extent the Company elects (or is required by the terms of any Indebtedness), to prepay, repay, redeem or purchase (and permanently reduce the commitments thereunder) Senior Indebtedness with such percentage of Excess Cash Flow;

(2) second, to the extent of the balance of such percentage of Excess Cash Flow after application in accordance with clause (1), to make an offer to the holders of the Notes (and to holders of other Senior Subordinated Indebtedness designated by the Company) to purchase Notes (and such other Senior Subordinated Indebtedness) pursuant to and subject to the conditions contained in this Indenture (an "Excess Cash Flow Offer"); and

(3) third, to the extent of the balance of such percentage of Excess Cash Flow after application in accordance with clause (1) or (2) above, to any other application or use not prohibited by this Indenture;

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (1) above, the Company shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased; and provided, further, that no Excess Cash Flow Offer shall be required to be made if the Leverage Ratio is less than 3.0 to 1.0 on the last day of such fiscal year.

Notwithstanding the foregoing, the amount of Excess Cash Flow included in any Excess Cash Flow Offer shall be reduced by the aggregate amount of any optional prepayments of Senior Indebtedness during such fiscal year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Senior Indebtedness.

(b) In the event of an Excess Cash Flow Offer, the Company will be required to purchase Notes tendered pursuant to

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an offer by the Company for the Notes (and other Senior Subordinated Indebtedness) at a purchase price of 100% of their principal amount (without premium) plus accrued but unpaid interest (or, in respect of such other Senior Subordinated Indebtedness, such lesser price, if any, as may be provided for by the terms of such Senior Subordinated Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth in this Indenture. If the aggregate purchase price of Notes (and any other Senior Subordinated Indebtedness) tendered pursuant to such offer is less than the Excess Cash Flow allotted to the purchase thereof, the Company will be required to apply the remaining Excess Cash Flow in accordance with clause (a)(3) above. The Company shall not be required to make an Excess Cash Flow Offer to purchase Notes (and other Senior Subordinated Indebtedness) pursuant to this Section 4.23 if the Excess Cash Flow available therefor is less than \$1.0 million (which lesser amount shall be carried forward for purposes of determining whether such

an offer is required with respect to the Excess Cash Flow in any subsequent fiscal year).

(c) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Section 4.23. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this clause by virtue thereof.

ARTICLE FIVE

SUCCESSOR CORPORATION

SECTION 5.01. Merger, Consolidation and Sale of Assets of the Company.

The Company shall not consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor

Company") shall be a Person organized and existing under the laws of the

United States of America, any State thereof or the District of Columbia and the Successor

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Company (if not the Company) shall expressly assume, by an indenture supplemental thereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement;

(2) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Subsidiary as a result of such transaction as having been Incurred by such Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, the Successor Company would be able to Incur an additional \$1.00 of Indebtedness pursuant to paragraph (b) of Section 4.13;

(4) immediately after giving effect to such transaction, the Successor Company shall have Consolidated Net Worth in an amount that is not less than the Consolidated Net Worth of the Company immediately prior to such transaction;

(5) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and

(6) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of such transaction and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such transaction had not occurred.

Notwithstanding the foregoing, any Restricted Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Company.

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SECTION 5.02. Successor Corporation Substituted for the Company.

Upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company in accordance with Section 5.01, in which the Company is not the continuing corporation, the Successor Company formed by such consolidation or into which the Company is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such surviving entity had been named as such, and the predecessor company, other than in the case of a conveyance, transfer or lease, shall be released from the obligation to pay the principal of and interest on the Notes.

SECTION 5.03. Merger, Consolidation and Sale of
Assets of Any Subsidiary Guarantor.

The Company shall not permit any Subsidiary Guarantor to consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all of its assets to, any Person (other than to the Company or another Subsidiary Guarantor) unless:

(1) the resulting, surviving or transferee Person (if not such Subsidiary) shall be a Person organized and existing under the laws of the jurisdiction under which the Subsidiary Guarantor was organized or under the laws of the United States of America, any State thereof or the District of Columbia, and such Person (if not the Subsidiary Guarantor) shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, in a form satisfactory to the Trustee, all the obligations of the Subsidiary Guarantor, if any, under its Subsidiary Guarantee;

(2) immediately after giving effect to such transaction or transactions on a pro forma basis (and treating any Indebtedness which becomes an obligation of the resulting, surviving or transferee Person as a result of such transaction as having been issued by such Person at the time of such transaction), no Default shall have occurred and be continuing; and

(3) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and

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such supplemental indenture (if any) comply with this Indenture.

The provisions of clauses (1) and (2) above shall not apply to any transactions that constitute an Asset Disposition if the Company complied with the applicable provisions of Section 4.15.

SECTION 5.04. Successor Corporation Substituted for Subsidiary Guarantor.

Upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of any Subsidiary Guarantor in accordance with Section 5.03, in which such Subsidiary Guarantor is not the continuing corporation, the successor Person formed by such consolidation or into which such Subsidiary Guarantor is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, such Subsidiary Guarantor under this Indenture with the same effect as if such surviving entity had been named as such, and the predecessor company, other than in the case of a conveyance, transfer or lease, shall be released from the obligation to pay the principal of and interest on the Notes.

ARTICLE SIX

DEFAULT AND REMEDIES

SECTION 6.01. Events of Default.

Each of the following is an "Event of Default":

(1) a default in the payment of interest on the Notes when due, continued for 30 days,

(2) a default in the payment of principal of any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, upon acceleration or otherwise (including the failure to pay the Mandatory Redemption Price if required);

(3) the failure by the Company to comply with its obligations under Section 5.01 or of any Subsidiary Guarantor to comply with its obligations under Section 5.03;

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(4) the failure by the Company to comply for 30 days after notice with any of its obligations under Section 4.14 (other than a failure to purchase Notes) or under Sections 4.08, 4.10, 4.11, 4.12, 4.13, 4.15 (other than a failure to purchase the Notes) and 4.18;

(5) the failure by the Company or any Subsidiary Guarantor to comply for 60 days after notice with their other agreements contained in this Indenture;

(6) Indebtedness of the Company, any Subsidiary Guarantor or any Significant Subsidiary (other than Indebtedness owed to the Company or its

Restricted Subsidiaries) is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$7.5 million (the "cross-acceleration provision");

(7) the Company, any Subsidiary Guarantor or any Significant Subsidiary of the Company (A) commences a voluntary case or proceeding under any Bankruptcy Law with respect to itself, (B) consents to the entry of a judgment, decree or order for relief against it in an involuntary case or proceeding under any Bankruptcy Law, (C) consents to the appointment of a Custodian of it or for substantially all of its property, or (D) makes a general assignment for the benefit of its creditors;

(8) a court of competent jurisdiction enters a judgment, decree or order for relief in respect of the Company, any Subsidiary Guarantor or any Significant Subsidiary of the Company in an involuntary case or proceeding under any Bankruptcy Law, which shall (A) order reorganization, arrangement, adjustment or composition in respect of the Company, any Subsidiary Guarantor or any such Significant Subsidiary, (B) appoint a Custodian of the Company, any Subsidiary Guarantor or any such Significant Subsidiary or for substantially all of its property or (C) order the winding-up or liquidation of its affairs; and such judgment, decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(9) any judgment or decree for the payment of money in excess of \$7.5 million (excluding judgments to the extent covered by insurance by one or more reputable insurers and as to which such insurers have acknowledged coverage for) is entered against the Company, any Subsidiary

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Guarantor or any Significant Subsidiary, remains outstanding for a period of 60 days following entry of such judgment and is not discharged, bonded, waived or stayed within 30 days after written notice (the "judgment default provision"); or

(10) a Subsidiary Guarantee of a Significant Subsidiary ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee) or is declared to be null and void and unenforceable or the Subsidiary Guarantee of a Significant Subsidiary is found to be invalid or a Subsidiary Guarantor that is a Significant Subsidiary denies its liability under its Subsidiary Guarantee (other than by reason of release of the Subsidiary Guarantor in accordance with the terms of this Indenture); provided, however, that an Event of Default will also be deemed to occur with respect to Subsidiaries that are not Significant Subsidiaries ("Insignificant Subsidiaries") if the Subsidiary

Guarantees of such Insignificant Subsidiaries cease to be in full force and effect or are declared null and void and unenforceable or such Insignificant Subsidiaries deny their liability under their Subsidiary Guarantees, if when aggregated and taken as a whole the Insignificant Subsidiaries subject to this clause (10) would meet the definition of a Significant Subsidiary.

However, a default under clause (4), (5) or (9) will not constitute an Event of Default until the Trustee or the Holders of 25% in principal amount of the outstanding Notes notify the Company in writing of the default and the Company does not cure such default within the time specified after receipt of such notice.

The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any Event of Default under clause (6) or (10) and any event which with the giving of notice or the lapse of time would become an Event of Default under clause (4), (5) or (9), its status and what action the Company is taking or proposes to take with respect thereto.

SECTION 6.02. Acceleration.

(a) If an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8) with respect to the Company) occurs and is continuing, and has not been waived pursuant to Section 6.04, then the Trustee, by written notice to

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the Company, or the Holders of at least 25% in principal amount of outstanding Notes, by notice in writing to the Company and the Trustee, may declare the principal of and accrued but unpaid interest on all the Notes to be due and payable. All such notices shall specify the respective Event of Default and that it is a "notice of acceleration". Upon any such declaration, such amount shall

be immediately due and payable; provided, however, that if upon such declaration there are any amounts outstanding under the Credit Facility and the amounts thereunder have not been accelerated, such principal and interest shall be due and payable upon the earlier of the time such amounts are accelerated or five (5) Business Days after receipt by the Company and the Representative under the Credit Facility of such declaration.

(b) If an Event of Default specified in Section 6.01(7) or (8) with respect to the Company occurs and is continuing, the principal of and interest on all the Notes will ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

(c) The Holders of a majority in principal amount of the Notes may, on behalf of the Holders of all of the Notes, rescind and cancel an acceleration and its consequences (i) if the rescission would not conflict with any judgment or decree, (ii) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration, (iii) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances and (iv) in the event of the cure or waiver of an Event of Default of the type described in Section 6.01(7) or (8), the Trustee shall have received an Officers' Certificate and an Opinion of Counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(d) In the event of any Event of Default specified in clause (6) above, such Event of Default and all consequences thereof (including, without limitation, any acceleration or resulting payment default) shall be annulled, waived or rescinded, automatically and without any action by the Trustee or the Holders of the Notes, if within 20 days after such Event of Default arose (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged in a manner that does not violate the terms of this Indenture or (y) the holders thereof have rescinded or waived the acceleration, notice

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or action (as the case may be) giving rise to such Event of Default.

SECTION 6.03. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

SECTION 6.04. Waiver of Past Defaults.

Subject to Sections 2.08, 6.07 and 9.02, the Holders of a majority in principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, waive an existing Default or Event of Default and its consequences, except a Default in the payment of principal of or interest on any Note as specified in clauses (i) and (ii) of Section 6.01. When a Default or Event of Default is waived, it is cured and ceases to exist for every purpose of this Indenture.

SECTION 6.05. Control by Majority.

Subject to Section 2.08, the Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it, including, without limitation, any remedies provided for in Section 6.03. Subject to Section 7.01, however, the Trustee may refuse to follow any direction that conflicts with any law or this Indenture, that the Trustee determines is unduly prejudicial to the rights of another Holder, or that may involve the Trustee in personal liability and the Trustee may take any other action it deems proper that is not inconsistent with any such direction received from Holders of the Notes.

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SECTION 6.06. Limitation on Suits.

Subject to Article Seven, if an Event of Default occurs and is

continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless

(1) such Holder has previously given the Trustee notice that an Event of Default is continuing,

(2) Holders of at least 25% in principal amount of the outstanding Notes have requested the Trustee to pursue the remedy,

(3) such Holders have offered the Trustee reasonable security or indemnity against any loss, liability or expense,

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity and

(5) the Holders of a majority in principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

SECTION 6.07. Rights of Holders To Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on a Note, on or after the respective due dates expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee.

If an Event of Default in payment of principal or interest specified in clause (1) or (2) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company, any Subsidiary Guarantor or any other obligor on the Notes for

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the whole amount of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest at the rate set forth in Section 4.01 and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents, consultants and counsel.

SECTION 6.09. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, taxes, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relating to the Company, any Subsidiary Guarantor or any other obligor upon the Notes, any of their respective creditors or any of their respective property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceedings is hereby authorized by each Holder to make such payments to the Trustee and, if the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, taxes, disbursements and advances of the Trustee, its agents, consultants and counsel, and any other amounts due the Trustee under Section 7.07. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities.

If the Trustee collects any money or property pursuant to this Article Six, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Holders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due

and payable on the Notes for principal and interest, respectively; and

Third: the balance, if any, to the Company or any other obligor on the Notes.

The Trustee, upon prior notice to the Company, may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

SECTION 6.11. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the outstanding Notes.

ARTICLE SEVEN

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing and is known to the Trustee, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise thereof as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) The Trustee need perform only those duties as are specifically set forth in this Indenture and no covenants or obligations shall be implied in this Indenture against the Trustee.

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) Notwithstanding anything to the contrary herein contained, the Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) This paragraph does not limit the effect of paragraph (b) of this Section 7.01.

(ii) The Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.02, 6.04 or 6.05 hereof.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

(e) Whether or not herein expressly provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (d) of this Section 7.01.

(f) The Trustee shall not be liable for interest on any money or assets received by it except as the Trustee may agree in writing with the Company or any Subsidiary Guarantor. Assets held in trust by the Trustee need not be segregated from other assets except to the extent required by law.

(g) Every provision of this Indenture relating to the conduct or

tion to the Trustee shall be subject to the provisions of this Section and to the provisions of the TIA.

SECTION 7.02. Rights of Trustee.

Subject to Section 7.01:

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(e) The Trustee may refuse to perform any duty or exercise any right or power which it reasonably believes may expose it to any loss, liability or expense unless it receives indemnity satisfactory to it against such loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall have no duty with respect to a Default unless a Trust Officer has actual knowledge of the Default. As used herein, the term "actual knowledge" means the actual fact or statement of knowing,

without any duty to make any investigation with regard thereto.

(h) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized and within its powers.

(i) Any Agent shall have the same rights and be protected to the same extent as if it were Trustee.

(j) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

SECTION 7.03. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes or coupons and may otherwise deal with the Company or an Affiliate with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights.

SECTION 7.04. Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Notes or any coupons; it shall not be accountable for the Company's use of the proceeds from the Notes; it shall not be responsible for any statement in the Notes or any coupons; it shall not be responsible for any overissue; it shall not be responsible for determining whether the form and terms of any Notes or coupons were established in conformity with this Indenture; it shall not be responsible for determining whether any Notes were issued in accordance with this Indenture; and it shall not be responsible for the acts or omissions of any other Trustees appointed hereunder.

SECTION 7.05. Notice of Defaults.

If a Default occurs and is continuing on a series and if a Trust Officer has actual knowledge of such Default, the Trustee shall mail a notice of the Default within 90 days after it occurs to Holders of Registered Securities of the series. Except in the case of a Default in payment on a series, the Trustee may withhold the notice if and so long as a committee of its Trust

Officers in good faith determines that withholding the notice is in the interest of Holders of the series. The Trustee shall withhold notice of a Default described in Section 6.01(4) until at least 60 days after it occurs.

SECTION 7.06. Reports by Trustee to Holders.

Any report required by TIA (S) 313(a) to be mailed to Noteholders shall be mailed by the Trustee on or before July 15th of each year.

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A copy of each report at the time of its mailing to Noteholders shall be filed with the SEC and each stock exchange on which any Notes are listed. The Company shall notify the Trustee when any Notes are listed on a stock exchange.

SECTION 7.07. Compensation and Indemnity.

The Company and the Subsidiary Guarantors shall pay to the Trustee from time to time reasonable compensation for its services. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company and the Subsidiary Guarantors shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel.

The Company and the Subsidiary Guarantors shall, jointly and severally, indemnify the Trustee against any loss or liability incurred by it. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company and the Subsidiary Guarantors shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent.

The Company and the Subsidiary Guarantors need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee through negligence or willful misconduct.

To secure the Company's and the Subsidiary Guarantors' payment obligations in this Section, the Trustee shall have a lien prior to the Notes and any coupons on all money or property held or collected by the Trustee, except that held in trust to pay principal or interest on particular securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(7) or (6) occurs, such expenses and the compensation for such services are intended to constitute expenses of administration under any Bankruptcy Law.

The provisions of this Section shall survive any termination or discharge of this Indenture (including without limitation any termination under any Bankruptcy Law) and the resignation or removal of the Trustee.

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SECTION 7.08. Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section.

The Trustee may resign by so notifying the Company. The Holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee with the Company's consent.

The Company may remove the Trustee if:

- (1) the Trustee fails to comply with TIA (S) 310(a) or (S) 310(b) or with Section 7.09;
- (2) the Trustee is adjudged a bankrupt or an insolvent;
- (3) a Custodian or other public officer takes charge of the Trustee or its property;
- (4) the Trustee becomes incapable of acting; or
- (5) an event of the kind described in Section 6.01(7) or (8) occurs with respect to the Trustee.

The Company also may remove the Trustee with or without cause if the Company so notifies the Trustee three months in advance and if no Default occurs during the three-month period.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of a majority in principal amount of the Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with TIA (S) 310(a) or (S) 310(b) or with Section 7.10, any Noteholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

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A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders of Registered Notes. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

SECTION 7.09. Successor Trustee by Merger, Etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

SECTION 7.10. Trustee's Capital and Surplus.

The Trustee at all times shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published report of financial condition.

SECTION 7.11. Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA (S) (S) 310(a)(1), (2) and (5). The Trustee (or, in the case of a Trustee included in a bank holding company system, the related bank holding company) shall have a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition. In addition, if the Trustee is a corporation included in a bank holding company system, the Trustee, independently of such bank holding company, shall meet the capital requirements of TIA (S) 310(a)(2). The Trustee shall comply with TIA (S) 310(b); provided, however, that there shall be excluded from the operation of TIA (S) 310(b)(1) any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding, if the requirements for such exclusion set forth in TIA (S) 310(b)(1) are met. The provisions of TIA (S) 310 shall apply to the Company, as obligor of the Notes.

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SECTION 7.12. Preferential Collection of
Claims Against Company.

The Trustee shall comply with TIA section 311(a), excluding any creditor relationship listed in TIA section 311(b). A Trustee who has resigned or been removed shall be subject to TIA section 311(a) to the extent indicated therein.

ARTICLE EIGHT

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on Notes;
Defeasance.

(a) This Indenture will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all outstanding Notes when:

(i) either (A) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid) have been delivered to the Trustee for cancellation or (B) all Notes not

theretofore delivered to the Trustee for cancellation have become due and payable or shall become due and payable within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee an amount in U.S. Legal Tender sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for the principal of, premium, if any, and interest to the date of deposit,

(ii) the Company has paid or caused to be paid all other sums payable under this Indenture by the Company; and

(iii) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel.

(b) Subject to Sections 8.01(c) and 8.02, the Company and the Subsidiary Guarantors at any time may terminate (i) all their obligations under the Notes, the Guarantees and this Indenture ("legal defeasance option") or (ii) -----
their obligations under Sections 4.04, 4.05, 4.08 and 4.10 through 4.22 and the operation of Sections 6.01(4), (6), (7) and (8) (with respect only to Subsidiary Guarantors or Significant Subsidiar

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ies) and (9) and the limitations contained in Sections 5.01(3) and (4) ("covenant defeasance option"). The Company may exercise its legal defeasance -----
option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercise its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default. If the Company exercise its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Sections 6.01(4), (6), (7) and (8) (with respect only to Subsidiary Guarantors or Significant Subsidiaries) and (9), or because of the failure of the Company to comply with Sections 5.01(3) and (4). If the Company exercise its legal defeasance option or its covenant defeasance option, each Subsidiary Guarantor, if any, shall be released from all its obligations under its Guarantee.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company and the Subsidiary Guarantors terminate.

(c) Notwithstanding clauses (a) and (b) above, the obligations of the Company and the Subsidiary Guarantors in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 7.07, 7.08, 8.05, 8.06 and the Appendix shall survive until the Notes have been paid in full. Thereafter, the obligations of the Company and the Subsidiary Guarantors, if any, in Sections 7.07, 8.05 and 8.06 shall survive.

SECTION 8.02. Conditions to Defeasance.

The following shall be the conditions to the application of Section 8.01 hereof to the outstanding Notes:

(1) the Company irrevocably deposits in trust with the Trustee U.S. Legal Tender or U.S. Government Obligations, or a combination thereof, for the payment of principal of, interest and premium, if any, on the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent public accountants or a nationally recognized investment banking firm expressing their opinion that the payments of

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principal and interest when due on the deposited U.S. Government Obligations plus any deposited U.S. Legal Tender will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all outstanding Notes to maturity or redemption, as the case may be;

(3) no Default or Event of Default with respect to the Notes shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;

(4) the Company delivers to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of

preferring the Holders over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(5) neither the deposit nor the defeasance shall result in a default or event of default under any other material agreement to which the Company is a party or by which the Company is bound;

(6) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(7) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Noteholders will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

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(8) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Noteholders will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(9) the Company deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes as contemplated by this Article 8 have been complied with.

SECTION 8.03. Application of Trust Money.

The Trustee shall hold in trust U.S. Legal Tender or U.S. Government Obligations deposited with it pursuant to this Article Eight. It shall apply the deposited U.S. Legal Tender and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

SECTION 8.04. Repayment to Company.

The Trustee and the Paying Agent shall promptly turn over to the Company (or the appropriate Subsidiary Guarantors), upon delivery of an Officers' Certificate stating that such payment does not violate the terms of this Indenture, any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company and the Subsidiary Guarantors upon this written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Noteholders entitled to the money must look to the Company and the Subsidiary Guarantors for payment as general creditors and all liability of the Trustee or Paying Agent with respect to such money shall thereupon cease.

SECTION 8.05. Indemnity for Government Obligations.

The Company and the Subsidiary Guarantors shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government

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Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06. Reinstatement.

If the funds deposited with the Trustee to effect covenant defeasance are insufficient to pay the principal of, premium and interest on the Notes when due, then the obligations of the Company and the Subsidiary Guarantors under this Indenture will be revived and no such defeasance will be deemed to have occurred.

If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender or U.S. Government Obligations in accordance with this Article Eight by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to this Article Eight until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender or U.S. Government Obligations in accordance with this Article Eight; provided, however, that, if the Company or the Subsidiary Guarantors have made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Company or the Subsidiary Guarantors, as the case may be, shall be subrogated to the rights of the Holders of such Notes to receive such payment from the U.S. Legal Tender or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE NINE

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 9.01. Without Consent of Holders.

The Company and the Subsidiary Guarantors, when authorized by a Board Resolution of each of them, and the Trustee, together, may amend or supplement this Indenture or the Notes or the Guarantees without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, defect or inconsistency;

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(ii) to comply with Article Five;

(iii) to provide for uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(iv) to comply with any requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(v) to add to the covenants of the Company for the benefit of the Holders or to surrender a right or power conferred upon the Company;

(vi) to add Guarantees with respect to the Notes;

(vii) to secure the Notes; or

(viii) to make any other change that does not adversely affect in any material respect the rights of any Holders hereunder;

provided that the Company have delivered to the Trustee an Opinion of Counsel stating that such amendment or supplement complies with the provisions of this Section 9.01.

After an amendment, supplement or waiver under this Section 9.01 becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

SECTION 9.02. With Consent of Holders.

Subject to Section 6.07, the Company, the Subsidiary Guarantors when authorized by a Board Resolution of each of them, and the Trustee, together, with the written consent of the Holder or Holders of at least a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes), may amend or supplement this Indenture or the Notes, without notice to any other Holders. The Holder or Holders of at least a majority in

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aggregate principal amount of the then outstanding Notes may waive compliance by the Company or the Subsidiary Guarantors with any provision of this Indenture or the Notes without notice to any other Holder. Notwithstanding the above, no amendment, supplement or waiver, including a waiver pursuant to Section 6.04, shall, without the consent of each Holder of each Note affected thereby:

- (1) reduce the amount of Notes whose Holders must consent to an amendment,
- (2) reduce the rate of or change the time for payment of interest on any Note,
- (3) reduce the principal of or change the Stated Maturity of any Note,
- (4) reduce the amount payable upon the redemption of any Note or change the time at which any Note may be redeemed in accordance with Article Three,
- (5) make any Note payable in money other than that stated in the Note,
- (6) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes,
- (7) affect the ranking of the Notes in any material respect,
- (8) release any Subsidiary Guarantor that is a Significant Subsidiary from any of its obligations under its Subsidiary Guarantee or this Indenture other than in accordance with the terms of this Indenture, or
- (9) make any change to paragraph 8 of the Notes which would adversely affect the rights of any of the Holders to receive the Mandatory Redemption Price; or
- (10) make any change in the amendment provisions which require each holder's consent or in the waiver provisions.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form

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of any proposed amendment, supplement form or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

SECTION 9.03. Compliance with TIA.

If at the time of an amendment to this Indenture or the Notes, this Indenture shall be qualified under the TIA, every amendment, waiver or supplement of this Indenture or the Notes shall comply with the TIA as then in effect.

SECTION 9.04. Revocation and Effect of Consents.

Until an amendment, waiver or supplement becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. Subject to the following paragraph, any such Holder or subsequent Holder may revoke the consent as to such Holder's Note or portion of such Note by notice to the Trustee or the Company received before the date the amendment, supplement or waiver becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver, which record date shall be (i) the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation pursuant to Section 2.05 above or (ii) such other date as the Company may designate. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 180 days after such record date.

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After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it makes a change described in any of clauses (i) through (ix) of Section 9.02, in which case, the amendment, supplement or waiver shall bind only each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note; provided that, without the consent of a Holder, any such waiver shall not impair or affect the right of such Holder to receive payment of principal of and interest on a Note, on or after the respective due dates expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates.

SECTION 9.05. Notation on or Exchange of Notes.

If an amendment, supplement or waiver changes the terms of a Note, the Trustee may require the Holder of such Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue, the Subsidiary Guarantors shall endorse and the Trustee shall authenticate a new Note that reflects the changed terms. Any such notation or exchange shall be made at the sole cost and expense of the Company. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.06. Trustee To Sign Amendments, Etc.

The Trustee shall execute any amendment, supplement or waiver authorized pursuant to this Article Nine; provided that the Trustee may, but shall not be obligated to, execute any such amendment, supplement or waiver which affects the Trustee's own rights, duties or immunities under this Indenture. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate each stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article Nine is authorized or permitted by this Indenture. Such Opinion of Counsel shall not be an expense of the Trustee.

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ARTICLE TEN

GUARANTEES

SECTION 10.01. Unconditional Guarantee.

Each Subsidiary Guarantor shall unconditionally jointly and severally guarantee to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, that: (i) the principal of and interest on the Notes will be promptly paid in full when due, subject to any applicable grace period, whether at maturity, by acceleration or otherwise and interest on the overdue principal, if any, and interest on any interest, to the extent lawful, of the Notes and all other obligations of the Company to the Holders or the Trustee under this Indenture or the Notes will be promptly paid in full or performed, all in accordance with the terms hereof and thereof and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, subject to any applicable grace period, whether at stated maturity, by acceleration or otherwise.

Each Subsidiary Guarantor agrees that, as between such Subsidiary Guarantor on the one hand, and the Holders and the Trustee on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six for the purposes of the Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article Six, such obligations (whether or not due and payable) shall forthwith become due and payable by such Subsidiary Guarantor for the purposes of the Guarantee.

Each Subsidiary Guarantor agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Subsidiary Guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against

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the Company, protest, notice and all demands whatsoever and covenants that the Guarantee will not be discharged except by complete performance of the obligations contained in the Notes, this Indenture and in the Guarantee. If any Noteholder or the Trustee is required by any court or otherwise to return to the Company, any Subsidiary Guarantor, or any Custodian acting in relation to the Company or any Subsidiary Guarantor, any amount paid by the Company or such Subsidiary Guarantor to the Trustee or such Noteholder, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Subsidiary Guarantor agrees that, in the event of default in the payment of principal (or premium, if any) or interest on such Notes, whether at their Stated Maturity, by acceleration, upon redemption, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Notes, subject to the terms and conditions set forth in this Indenture, directly against each of the Subsidiary Guarantors to enforce the Guarantee without first proceeding against the Company. Each Subsidiary Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce any other right or remedy with respect to the Notes, the Subsidiary Guarantors will pay to the Trustee for the account of the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders. The Subsidiary Guarantors will agree to pay, in addition to the amount stated above, any and all expenses (including reasonable counsel fees and expenses) incurred by the Trustee and the Holders in enforcing any rights under the Subsidiary Guarantees with respect to the Subsidiary Guarantors.

SECTION 10.02. Severability.

In case any provision of the Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 10.03. Release of Subsidiary Guarantor from the Guarantee.

Upon (a) the designation of a Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with this Indenture or (b) the sale or disposition (whether by merger, stock purchase,

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asset sale or otherwise) of all of the Capital Stock of a Subsidiary Guarantor (or all or substantially all of its assets) to an entity which is not the Company or a Subsidiary or Affiliate of the Company and which sale or disposition is otherwise in compliance with the terms of this Indenture, such Subsidiary Guarantor shall be deemed released from all obligations under this Article Ten without any further action required on the part of the Trustee or any Holder; provided, however, that if the lenders under the Credit Facility release the guarantee of any guarantor under the Credit Facility that is also a Subsidiary Guarantor, such Subsidiary Guarantor will be automatically released and relieved of all of its obligations under this Indenture and its Subsidiary Guarantee and such Subsidiary Guarantee will terminate; provided, further, however, if at any time after such release such Subsidiary Guarantor again becomes a guarantor under the Credit Facility, the Company shall cause such Subsidiary Guarantor to unconditionally guarantee on a senior subordinated basis all of the Company's obligations under the Notes and this Indenture to the same extent as it guarantees the Company's obligations under the Credit Facility.

The Trustee shall deliver an appropriate instrument evidencing such release upon receipt of a request by the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 10.03.

SECTION 10.04. Limitation on Amount Guaranteed; Contribution by Subsidiary

Guarantors.

(a) Anything contained in this Indenture or the Guarantee to the contrary notwithstanding, if any Fraudulent Transfer Law (as hereinafter defined) is determined by a court of competent jurisdiction to be applicable to the obligations of any Subsidiary Guarantor under the Guarantee, such obligations of such Subsidiary Guarantor under the Guarantee shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations under the Guarantee subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the "Fraudulent

Transfer Laws"), in each case after giving effect to all other liabilities of

such Subsidiary Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of

such Subsidiary Guarantor (x) in respect of intercompany Indebtedness to the Company or other Affiliates of the Company to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Subsidiary Guarantor

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under the Guarantee and (y) under any Guarantee of Subordinated Obligations which Guarantee contains a limitation as to maximum amount similar to that set forth in this subsection 10.04(a), pursuant to which the liability of such Subsidiary Guarantor under the Guarantee is included in the liabilities taken into account in determining such maximum amount) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification or contribution of such Subsidiary Guarantor pursuant to applicable law or pursuant to the terms of any agreement (including without limitation any such right of contribution under subsection 10.04(b)).

(b) The Subsidiary Guarantors together may desire to allocate among themselves in a fair and equitable manner, their obligations arising under the Guarantee. Accordingly, if any payment or distribution is made on any date by any Subsidiary Guarantor under the Guarantee (a "Funding Subsidiary Guarantor")

that exceeds its Fair Share (as defined below) as of such date, that Funding Subsidiary Guarantor will be entitled to a contribution from each of the other Subsidiary Guarantors in the amount of such other Subsidiary Guarantor's Fair Share Shortfall (as defined below) as of such date, with the result that all such contributions will cause each Subsidiary Guarantor's Aggregate Payments (as defined below) to equal its Fair Share as of such date. "Fair Share" means,

with respect to a Subsidiary Guarantor as of any date of determination, an amount equal to (i) the ratio of (x) the Adjusted Maximum Amount (as defined below) with respect to such Subsidiary Guarantor to (y) the aggregate of the Adjusted Maximum Amounts with respect to all Subsidiary Guarantors, multiplied by (ii) the aggregate amount paid or distributed on or before such date by all Funding Subsidiary Guarantors under the Guarantee in respect of the obligations guaranteed. "Fair Share Shortfall" means, with respect to a Subsidiary

Guarantor as of any date of determination, the excess, if any, of the Fair Share of such Subsidiary Guarantor over the Aggregate Payments of such Subsidiary Guarantor. "Adjusted Maximum Amount" means, with respect to a Subsidiary

Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Subsidiary Guarantor under the Guarantee, determined as of such date in accordance with subsection 10.04(a); provided that, solely for purposes of calculating the Adjusted Maximum Amount with respect to any Subsidiary Guarantor for purposes of this subsection 10.05(b), any assets or liabilities of such Subsidiary Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or li-

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abilities of such Subsidiary Guarantor. "Aggregate Payments" means, with respect to a Subsidiary Guarantor as of any date of determination, an amount equal to (i) the aggregate amount of all payments and distributions made on or before such date by such Subsidiary Guarantor in respect of the Guarantee (including, without, limitation, in respect of this subsection 10.04(b) minus (ii) the aggregate amount of all payments received on or before such date by such Subsidiary Guarantor from the other Subsidiary Guarantors as contributions under this subsection 10.05(b)). The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Subsidiary Guarantor. The allocation among Subsidiary Guarantors of their obligations as set forth in this subsection 10.04(b) shall not be construed in any way to limit the liability of any Subsidiary Guarantor under this Indenture or under the Guarantee.

SECTION 10.05. Waiver of Subrogation.

Until payment in full is made of the Notes and all other obligations of the Company to the Holders or the Trustee hereunder and under the Notes, each Subsidiary Guarantor irrevocably waives any claim or other rights it acquires against the Company that arise from the existence, payment, performance or enforcement of such Subsidiary Guarantor's obligations under the Guarantee and this Indenture, including without limitation, any right of subrogation, reimbursement, exoneration, indemnification, and any right to participate in any claim or remedy of any Holder of Notes against the Company, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Company, directly or indirectly, in cash or other property or by set-off or any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Subsidiary Guarantor in violation of the preceding sentence and the Notes shall not have been paid in full, such amount shall have been deemed to have been paid to such Subsidiary Guarantor for the

benefit of, and held in trust for the benefit of, the Holders of the Notes, and shall forthwith be paid to the Trustee for the benefit of such Holders to be credited and applied upon the Notes, whether matured or unmatured, in accordance with the terms of this Indenture. Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the waiver set forth in this Section 10.05 is knowingly made in contemplation of such benefits.

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SECTION 10.06. Execution of Guarantee.

To evidence its guarantee to the Noteholders set forth in this Article Ten, each Subsidiary Guarantor will execute the Guarantee in substantially the form attached to this Indenture as Exhibit C, which shall be endorsed on each

Note ordered to be authenticated and delivered by the Trustee. Each Subsidiary Guarantor agrees that the Guarantee set forth in this Article Ten shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of the Guarantee. The Guarantee shall be signed on behalf of each Subsidiary Guarantor by one Officer of such Subsidiary Guarantor (each of whom shall, in each case, have been duly authorized by all requisite corporate actions), and the delivery of such Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee on behalf of such Subsidiary Guarantor. Such signatures upon the Guarantee may be by manual or facsimile signature of such officers and may be imprinted or otherwise reproduced on the Guarantee, and in case any such Officer who shall have signed the Guarantee shall cease to be such officer before the Note on which the Guarantee is endorsed shall have been authenticated and delivered by the Trustee or disposed of by the Company, such Note nevertheless may be authenticated and delivered or disposed of as though the person who signed the Guarantee had not ceased to be such Officer of such Subsidiary Guarantor.

SECTION 10.07. Waiver of Stay, Extension or Usury Laws.

Each Subsidiary Guarantor covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive such Subsidiary Guarantor from performing the Guarantee as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) each Subsidiary Guarantor expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

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ARTICLE ELEVEN

SUBORDINATION OF NOTES

SECTION 11.01. Agreement to Subordinate.

The Company agrees, and each Holder of the Notes by accepting a Note agrees, that the Indebtedness evidenced by the Notes is subordinated in right of payment, to the extent and in the manner provided in this Article Eleven, to the prior payment in full in cash of all Senior Indebtedness of the Company and that the subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness. The Notes shall in all respects rank *pari passu* with all

other Senior Subordinated Indebtedness of the Company and only Indebtedness which is Senior Indebtedness shall rank senior to the Notes in accordance with the provisions set forth herein. All provisions of this Article Eleven shall be subject to Section 11.12.

SECTION 11.02. Liquidation, Dissolution, Bankruptcy.

Upon any payment or distribution of the assets of the Company to creditors upon a total or partial liquidation or a total or partial dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property:

(i) holders of Senior Indebtedness of the Company shall be entitled to receive payment in full in cash of such Senior Indebtedness of the Company before Holders shall be entitled to receive any payment of principal of or interest on the Notes; and

(ii) until such Senior Indebtedness of the Company is paid in full

in cash, any payment or distribution to which Holders would be entitled but for this Article Eleven shall be made to holders of such Senior Indebtedness as their interests may appear; and

(iii) if a distribution is made to holders of the Notes that, due to the subordination provisions, should not have been made to them, such holders of the Notes are required to hold it in trust for the holders of Senior Indebtedness and pay it over to them as their interests may appear.

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SECTION 11.03. Default on Senior Indebtedness.

The Company may not pay the principal of, premium (if any) or interest on the Notes or make any deposit pursuant to Section 8.01 and may not repurchase, redeem or otherwise retire any Notes (collectively, "pay the Notes") if (i) any Designated Senior Indebtedness of the Company is not paid in full in cash when due or (ii) any other default on Designated Senior Indebtedness of the Company occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (x) the default has been cured or waived and any such acceleration has been rescinded or (y) such Designated Senior Indebtedness has been paid in full in cash; provided,

however, that the Company may pay the Notes without regard to the foregoing if
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the Company and the Trustee receive written notice approving such payment from the Representative of such Designated Senior Indebtedness. During the continuance of any default (other than a default described in clause (i) or (ii) of the preceding sentence) with respect to any Designated Senior Indebtedness of the Company pursuant to which the maturity thereof may be accelerated either immediately without further notice (except such notice as may be required to effect such acceleration) or after the expiration of any applicable grace periods, the Company may not pay the Notes for a period (a "Payment Blockage Period") commencing upon the receipt by the Trustee (with a copy to the Company) of written notice (a "Blockage Notice") of such default from the Representative of the holders of such Designated Senior Indebtedness of the Company specifying an election to effect a Payment Blockage Period and ending 179 days thereafter (or earlier if such Payment Blockage Period is terminated (i) by written notice to the Trustee and the Company from the Person or Persons who gave such Blockage Notice, (ii) because the default giving rise to such Blockage Notice is cured, waived or no longer continuing or (iii) because such Designated Senior Indebtedness has been discharged or paid in full in cash). Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the first sentence of this Section 11.03), unless the holders of such Designated Senior Indebtedness of the Company or the Representative of such holders have accelerated the maturity of such Designated Senior Indebtedness of the Company, the Company may resume payments on the Notes after the end of such Payment Blockage Period, including any missed payments. The Notes shall not be subject to more than one Payment Blockage Period in any consecutive 360-day period, irrespective of the number of defaults with respect to Designated Senior Indebtedness of the Company during such period. No default or event of default which existed or was

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continuing on the date of the commencement of any Payment Blockage Period with respect to the Designated Senior Indebtedness of the Company initiating such Payment Blockage Period (whether or not such default is on the same issue of Designated Senior Indebtedness) shall be, or be made, the basis of the commencement of a subsequent Payment Blockage Period by the Representative of such Designated Senior Indebtedness of the Company, whether or not within a period of 360 consecutive days, unless such default or event of default shall have been cured or waived in writing for a period of not less than 90 consecutive days subsequent to commencement of such initial Payment Blockage Period.

SECTION 11.04. Acceleration of Payment of Notes.

If payment of the Notes is accelerated because of an Event of Default, the Company or the Trustee shall promptly notify the holders of the Designated Senior Indebtedness of the Company (or their Representatives) of the acceleration. The Trustee shall give notice of such acceleration, of which it has actual knowledge, to all holders of Designated Senior Indebtedness of the Company. Prior to the Trustee's giving such notice, the Company shall notify the Trustee of the name and address of any such holder of Designated Senior Indebtedness of the Company.

SECTION 11.05. When Distribution Must Be Paid Over.

If a distribution is made to Holders of the Notes that because of this Article Eleven should not have been made to them, such Holders who receive the distribution shall hold it in trust for holders of Senior Indebtedness of the

Company and pay it over to them as their interests may appear and the Trustee shall not be liable to any holders of Senior Indebtedness of the Company with respect thereto. With respect to the holders of Senior Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article Eleven and no implied covenants or obligations with respect to holders of Senior Indebtedness of the Company shall be read into this Indenture against the Trustee.

SECTION 11.06. Subrogation.

After all Senior Indebtedness of the Company is paid in full in cash and until the Notes are paid in full, Holders of the Notes shall be subrogated to the rights of holders of such Senior Indebtedness to receive distributions applicable to

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such Senior Indebtedness. A distribution made under this Article Eleven to holders of such Senior Indebtedness of the Company which otherwise would have been made to Holders of the Notes is not, as between the Company and Holders of the Notes, a payment by the Company on such Senior Indebtedness of the Company.

SECTION 11.07. Relative Rights.

This Article Eleven defines the relative rights of Holders of the Notes and holders of Senior Indebtedness of the Company. Nothing in this Indenture shall:

(i) impair, as between the Company and Holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest on the Notes in accordance with their terms; or

(ii) prevent the Trustee or any Holder of the Notes from exercising its available remedies upon a Default, subject to the rights of holders of Senior Indebtedness of the Company to receive distributions otherwise payable to Holders.

SECTION 11.08. Subrogation May Not Be Impaired By The Company.

No right of any holder of Senior Indebtedness of the Company to enforce the subordination of the Indebtedness evidenced by the Notes shall be impaired by any act or failure to act by the Company or by their failure to comply with this Indenture.

SECTION 11.09. Rights of Trustee and Paying Agent.

Notwithstanding Section 11.03, the Trustee or Paying Agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two Business Days prior to the date of such payment, a Trust Officer of the Trustee receives notice satisfactory to it that payments may not be made under this Article Eleven. The Company, the Registrar or co-registrar, the Paying Agent, a Representative or a holder of Senior Indebtedness of the Company may give the notice; provided, however, that, if an issue of

Senior Indebtedness of the Company has a Representative, only the Representative may give the notice.

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The Trustee in its individual or any other capacity may hold Senior Indebtedness of the Company with the same rights it would have if it were not Trustee. The Registrar and co-registrar and the Paying Agent may do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article Eleven with respect to any Senior Indebtedness of the Company which may at any time be held by it, to the same extent as any other holder of such Senior Indebtedness; and nothing in Article Seven shall deprive the Trustee of any of its rights as such holder. Nothing in this Article Eleven shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07.

SECTION 11.10. Distribution or Notice to Representative.

Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness of the Company, the distribution may be made and the notice given to their Representative (if any).

SECTION 11.11. Article Eleven Not To Prevent Events of Default or Limit Right To

Accelerate

The failure to make a payment pursuant to the Notes by reason of any provision in this Article Eleven shall not be construed as preventing the occurrence of a Default. Nothing in this Article Eleven shall have any effect on the right of the Holders or the Trustee to accelerate the maturity of the Notes.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of the Company and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Notes or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness of the Company shall be entitled by virtue of this Article Eleven or otherwise.

SECTION 11.12. Trust Moneys Not Subordinated.

Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of U.S. Government Obligations held in trust under Article Eight by the Trustee for the payment of principal of and interest on the Notes shall not be subordinated to the prior payment of any Senior Indebtedness of the Company or subject to the restrictions set forth in this Article Eleven, and none of the Holders of the Notes

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shall be obligated to pay over any such amount to the Company or any holder of Senior Indebtedness of the Company or any other creditor of the Company.

SECTION 11.13. Trustee Entitled To Rely.

Upon any payment or distribution pursuant to this Article Eleven, the Trustee and the Holders shall be entitled to rely (i) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 11.02 are pending, (ii) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to the Holders or (iii) upon the Representatives for the holders of Senior Indebtedness for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of such Senior Indebtedness and other Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Eleven. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of the Company to participate in any payment or distribution pursuant to this Article Eleven, the Trustee may request such Person to furnish evidence to the satisfaction of the Trustee as to the amount of such Senior Indebtedness of the Company held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article Eleven, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Sections 7.01 and 7.02 shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article Eleven.

SECTION 11.14. Trustee To Effectuate Subordination.

Each Holder by accepting a Note authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Holders and the holders of Senior Indebtedness of the Company as provided in this Article Eleven and appoints the Trustee as attorney-in-fact for any and all such purposes.

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SECTION 11.15. Trustee Not Fiduciary for Holders of Senior Indebtedness.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of the Company and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders or the Company or any other Person, money or assets to which any holders of Senior Indebtedness of the Company shall be entitled by virtue of this Article Eleven or otherwise.

SECTION 11.16. Reliance by Holders of Senior Indebtedness on Subordination.

Each Holder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness of the Company whether such Senior Indebtedness was created or acquired before or after the

issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

ARTICLE TWELVE

SUBORDINATION OF GUARANTEES

SECTION 12.01. Agreement to Subordinate.

Each Subsidiary Guarantor by execution of a Subsidiary Guarantee jointly and unconditionally will agree, and each Holder by accepting a Note will agree, that any payment of obligations by each Subsidiary Guarantor in respect of the Subsidiary Guarantee (its "Subsidiary Guarantee Obligations") is subordinated in right of payment, to the extent and in the manner provided in this Article Twelve, to the prior payment in full in cash of all Senior Indebtedness of such Subsidiary Guarantor and that the subordination is for the benefit of and enforceable by the holders of such Subsidiary Guarantor's Senior Indebtedness. The Subsidiary Guarantee Obligations shall in all respects rank pari passu with all other Senior Subordinated Indebtedness of such Subsidiary

Guarantors and only Indebtedness which is Senior Indebtedness of such Subsidiary

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Guarantors shall rank senior to the Subsidiary Guarantee Obligations in accordance with the provisions set forth herein.

SECTION 12.02. Liquidation, Dissolution, Bankruptcy.

Upon any payment or distribution of the assets of any Subsidiary Guarantor to creditors upon a total or partial liquidation or a total or partial dissolution of such Subsidiary Guarantor or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to such Subsidiary Guarantor or its property:

(1) holders of such Subsidiary Guarantor's Senior Indebtedness shall be entitled to receive payment in full in cash of such Senior Indebtedness before Holders shall be entitled to receive any payment with respect to the Subsidiary Guarantee;

(2) until such Subsidiary Guarantor's Senior Indebtedness is paid in full in cash, any payment with respect to the Subsidiary Guarantee to which Holders would be entitled but for this Article Twelve shall be made to holders of such Senior Indebtedness as their interests may appear; and

(3) if a distribution is made to holders of the Notes that, due to the subordination provisions, should not have been made to them, such holders of the Notes are required to hold it in trust for the holders of Senior Indebtedness and pay it over to them as their interests may appear.

SECTION 12.03. Default on Senior Indebtedness.

A Subsidiary Guarantor may not make any payment with respect to its Subsidiary Guarantee Obligations or make any deposit pursuant to Section 8.01 (collectively, "pay the Subsidiary Guarantee") if (i) any of such Subsidiary Guarantor's or the Company's Designated Senior Indebtedness is not paid in full in cash when due or (ii) any other default on such Subsidiary Guarantor's or the Company's Designated Senior Indebtedness occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (x) the default has been cured or waived and any such acceleration has been rescinded or (y) such Designated Senior Indebtedness has been paid in full in cash; provided, however, that the Subsidiary Guarantor may

pay the Subsidiary Guarantee without regard to the foregoing if the Trustee re-

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ceives written notice approving such payment from the Representative of such Designated Senior Indebtedness guaranteed by such Subsidiary Guarantor. During the continuance of any default (other than a default described in clause (i) or (ii) of the preceding sentence) with respect to any Subsidiary Guarantor's or Company's Designated Senior Indebtedness pursuant to which the maturity thereof may be accelerated either immediately without further notice (except such notice as may be required to effect such acceleration) or after the expiration of any applicable grace periods, the Subsidiary Guarantor may not pay the Subsidiary Guarantee for a period (a "Payment Blockage Period") commencing upon the receipt by the Trustee (with a copy to such Subsidiary Guarantor) of written notice (a

"Blockage Notice") of such default from the Representative of such Designated Senior Indebtedness of such Subsidiary Guarantor or the Company guaranteed by such Subsidiary Guarantor specifying an election to effect a Payment Blockage Period and ending 179 days thereafter (or earlier if such Payment Blockage Period is terminated (i) by written notice to the Trustee and such Subsidiary Guarantor from the Person or Persons who gave such Blockage Notice, (ii) because the default giving rise to such Blockage Notice is cured, waived or otherwise no longer continuing or (iii) because such Designated Senior Indebtedness of such Subsidiary Guarantor and the related Designated Senior Indebtedness of the Company has been discharged or paid in full). Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the first sentence of this Section 12.03), unless the holders of such Subsidiary Guarantor's or the Company's Designated Senior Indebtedness or the Representative of such holders shall have accelerated the maturity of such Subsidiary Guarantor's or the Company's Designated Senior Indebtedness, the Subsidiary Guarantor may resume payments on the Subsidiary Guarantee after termination of such Payment Blockage Period, including any missed payments. The Subsidiary Guarantee will not be subject to more than one Payment Blockage Period in any consecutive 360-day period, irrespective of the number of defaults with respect to such Designated Senior Indebtedness during such period. No default or event of default which existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to the Subsidiary Guarantor's or the Company' Designated Senior Indebtedness initiating such Payment Blockage Period (whether or not such default is on the same issue of Designated Senior Indebtedness) shall be, or be made, the basis of the commencement of a subsequent Payment Blockage Period by the Representative of such Subsidiary Guarantor's or the Company' Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or

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event of default shall have been cured or waived for a period of not less than 90 consecutive days subsequent to commencement of such initial Payment Blockage Period.

SECTION 12.04. Acceleration of Payment of Notes.

If payment of a Subsidiary Guarantee is accelerated because of an Event of Default, such Subsidiary Guarantor or the Trustee shall promptly notify the holders of such Subsidiary Guarantor's or the Company' Designated Senior Indebtedness (or their Representatives) of the acceleration. The Trustee shall give notice of such acceleration, of which it has actual knowledge, to all holders of such Subsidiary Guarantor's or the Company' Designated Senior Indebtedness. Prior to the Trustee's giving such notice, the Company shall notify the Trustee of the name and address of any such holder of such Designated Senior Indebtedness.

SECTION 12.05. When Distribution Must Be Paid Over.

If a distribution is made to holders that because of this Article Twelve should not have been made to them, the Holders who receive the distribution shall hold it in trust for holders of such Subsidiary Guarantor's Senior Indebtedness and pay it over to them as their interests may appear, and the Trustee shall not be liable to any holders of such Subsidiary Guarantor's Senior Indebtedness. With respect to the holders of such Subsidiary Guarantor's Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article Twelve and no implied covenants or obligations with respect to holders of such Subsidiary Guarantor's Senior Indebtedness shall be read into this Indenture against the Trustee.

SECTION 12.06. Subrogation.

After a Subsidiary Guarantor's Senior Indebtedness is paid in full in cash and until the Subsidiary Guarantees are paid in full, Holders shall be subrogated to the rights of holders of such Senior Indebtedness to receive distributions applicable to such Subsidiary Guarantor's Senior Indebtedness. A distribution made under this Article Twelve to holders of such Subsidiary Guarantor's Senior Indebtedness which otherwise would have been made to Holders is not, as between such Subsidiary Guarantor and Holders, a payment by such Subsidiary Guarantor on such Senior Indebtedness.

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SECTION 12.07. Relative Rights.

This Article Twelve defines the relative rights of Holders and holders of a Subsidiary Guarantor's Senior Indebtedness. Nothing in this Indenture shall:

- (i) impair, as between such Subsidiary Guarantor and Holders, the

obligation of such Subsidiary Guarantor, which is absolute and unconditional, to pay the Subsidiary Guarantee Obligations in accordance with their terms; or

(ii) prevent the Trustee or any Holder from exercising its available remedies upon a Default, subject to the rights of holders of a Subsidiary Guarantor's Senior Indebtedness to receive distributions otherwise payable to Holders.

SECTION 12.08. Subordination May Not Be Impaired by a Subsidiary Guarantor.

No right of any holder of a Subsidiary Guarantor's Senior Indebtedness to enforce the subordination of the Indebtedness evidenced by the Subsidiary Guarantees shall be impaired by any act or failure to act by such Subsidiary Guarantor or by its failure to comply with this Indenture.

SECTION 12.09. Rights of Trustee and Paying Agent.

Notwithstanding Section 12.03, the Trustee or Paying Agent may continue to make payments in respect of a Subsidiary Guarantee and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two Business Days prior to the date of such payment, a Trust Officer of the Trustee receives notice satisfactory to it that payments may not be made under this Article Twelve. Such Subsidiary Guarantor, the Registrar or co-registrar, the Paying Agent, a Representative or a holder of such Subsidiary Guarantor's Senior Indebtedness may give the notice; provided, however, that, if an issue of a Subsidiary Guarantor's Senior

Indebtedness has a Representative, only the Representative may give the notice.

The Trustee in its individual or any other capacity may hold a Subsidiary Guarantor's Senior Indebtedness with the same rights it would have if it were not Trustee. The Registrar and co-registrar, the Paying Agent and any agent of any Subsidiary Guarantor may do the same with like rights. The Trustee shall be entitled to all the rights set forth in this

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Article Twelve with respect to any Subsidiary Guarantor's Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of such Subsidiary Guarantor's Senior Indebtedness; and nothing in Article Seven shall deprive the Trustee of any of its rights as such holder. Nothing in this Article Twelve shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.07.

SECTION 12.10. Distribution or Notice to Representative.

Whenever a distribution is to be made or a notice given to holders of a Subsidiary Guarantor's Senior Indebtedness, the distribution may be made and the notice given to their Representative (if any).

SECTION 12.11. Article Twelve Not To Prevent Events of Default or Limit Right To

Accelerate

The failure to make a payment relating to the Subsidiary Guarantee Obligations by reason of any provision in this Article Twelve shall not be construed as preventing the occurrence of a Default. Nothing in this Article Twelve shall have any effect on the right of the Holders or the Trustee to accelerate the maturity of the Notes.

SECTION 12.12. Trust Moneys Not Subordinated.

Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of U.S. Government Obligations held in trust under Article Eight by the Trustee for the payment of principal of and interest on the Notes shall not be subordinated to the prior payment of any Subsidiary Guarantor's Senior Indebtedness or subject to the restrictions set forth in this Article Twelve, and none of the Holders shall be obligated to pay over any such amount to such Subsidiary Guarantor or any holder of such Subsidiary Guarantor's Senior Indebtedness or any other creditor of such Subsidiary Guarantor.

SECTION 12.13. Trustee Entitled To Rely.

Upon any payment or distribution pursuant to this Article Twelve, the Trustee and the Holders shall be entitled to rely (i) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 12.02 are pending, (ii) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution

upon the Representatives for the holders of each Subsidiary Guarantor's Senior Indebtedness for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of such Subsidiary Guarantor Senior Indebtedness and other Indebtedness of any Subsidiary Guarantor's, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Twelve. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of a Subsidiary Guarantor's Senior Indebtedness to participate in any payment or distribution pursuant to this Article Twelve, the Trustee may request such Person to furnish evidence to the satisfaction of the Trustee as to the amount of such Subsidiary Guarantor's Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article Twelve, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Sections 7.01 and 7.02 shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article Twelve.

SECTION 12.14. Trustee To Effectuate Subordination.

Each Holder by accepting a Note authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Holders and the holders of any Subsidiary Guarantor's Senior Indebtedness as provided in this Article Twelve and appoints the Trustee as attorney-in-fact for any and all such purposes.

SECTION 12.15. Trustee Not Fiduciary for Holders of Senior Indebtedness of

Subsidiary Guarantors.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of any Subsidiary Guarantor's Senior Indebtedness and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders or any Subsidiary Guarantor or any other Person, money or assets to which any holders of such Subsidiary Guarantor's Senior Indebtedness shall be entitled by virtue of this Article Twelve or otherwise.

SECTION 12.16. Reliance by Holders of Senior Indebtedness of Subsidiary

Guarantors on Subordination Provisions.

Each Holder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Subsidiary Guarantor's Senior Indebtedness whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

ARTICLE THIRTEEN

MISCELLANEOUS

SECTION 13.01. TIA Controls.

This Indenture is subject to the provisions of the TIA that are required to be a part of this Indenture, and shall, to the extent applicable, be governed by such provisions. If any provision of this Indenture modifies any TIA provision that may be so modified, such TIA provision shall be deemed to apply to this Indenture as so modified. If any provision of this Indenture excludes any TIA provisions that may be so excluded, such TIA provision shall be excluded from this Indenture.

The provision of TIA (S) (S) 310 through 317 that imposes duties on any Person (including the provisions automatically deemed included unless expressly excluded by this Indenture) are part of and govern this Indenture, whether or not physically contained therein.

SECTION 13.02. Notices.

Any notices or other communications required or permitted hereunder

shall be in writing, and shall be sufficiently given if made by hand delivery, by commercial courier service, by telex, by telecopier or registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

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if to the Company or any Subsidiary Guarantor:

Applied Power Inc.
6100 North Baker Road
Glendale, Wisconsin 53209
Facsimile No.: (414) 247-5550
Telephone: (414) 352-4160
Attn: Chief Financial Officer

with a copy to:

Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
Facsimile No.: (414) 271-3552
Telephone: (414) 277-5000
Attn: Anthony W. Asmuth, III, Esq.

if to the Trustee:

Bank One Trust Company, N.A.
One N. State Street, 9th Floor
Chicago, Illinois 60670-0126
Facsimile No.: (312) 407-1708
Telephone No.: (312) 407-1682
Attn: Corporate Trust Department

Each of the Company, the Subsidiary Guarantors and the Trustee by written notice to each other such Person may designate additional or different addresses for notices to such Person. Any notice or communication to the Company, the Subsidiary Guarantors and the Trustee shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is confirmed if delivered by commercial courier service; when receipt is acknowledged, if faxed; and five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid.

Any notice or communication mailed to a Holder shall be mailed to him by first class mail or other equivalent means at his address as it appears on the registration books of the Registrar and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed

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in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 13.03. Communications by Holders with Other Holders.

Holders may communicate pursuant to the TIA section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Subsidiary Guarantors, the Trustee, the Registrar and any other Person shall have the protection of the TIA section 312(c).

SECTION 13.04. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company or any Subsidiary Guarantor to the Trustee to take or refrain from taking any action under this Indenture, the Company or such Subsidiary Guarantor shall furnish to the Trustee:

(i) an Officers' Certificate, in form and substance satisfactory to the Trustee, stating that, in the opinion of the signers, all conditions precedent to be performed by the Company, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent to be performed by the Company, if any, provided for in this Indenture relating to the proposed action have been complied with.

SECTION 13.05. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture, other than the Officers' Certificate required by Section 4.06, shall include:

(i) a statement that the Person making such certificate or opinion has read such covenant or condition and the definitions relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

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(iii) a statement that, in the opinion of such Person, he has made such examination or investigation as is reasonably necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been complied with;

provided, that with respect to matters of fact, an Opinion of Counsel may rely on an Officers' Certificate or a certificate of an appropriate public official.

SECTION 13.06. Rules by Trustee, Paying Agent, Registrar.

The Trustee may make reasonable rules in accordance with the Trustee's customary practices for action by or at a meeting of Holders. The Paying Agent or Registrar may make reasonable rules for their respective functions.

SECTION 13.07. Legal Holidays.

If a payment date is a Legal Holiday, payment may be made at such place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

SECTION 13.08. Governing Law.

THIS INDENTURE, THE NOTES AND THE GUARANTEES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE.

SECTION 13.09. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company, any Subsidiary Guarantor or any of their Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

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SECTION 13.10. No Recourse Against Others.

No past, present or future member of the Board of Directors, officer, employee, equityholder or incorporator, as such, of the Company, any Subsidiary Guarantor or of the Trustee shall have any liability for any obligations of the Company or any Subsidiary Guarantor under the Notes, any Guarantee or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

SECTION 13.11. Successors.

All agreements of the Company and the Subsidiary Guarantors in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 13.12. Multiple Originals.

All parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together shall represent the same agreement.

SECTION 13.13. Severability.

In case any one or more of the provisions in this Indenture or in the Notes shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 13.14. Table of Contents, Cross Reference Table and Headings.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms of provisions hereof.

[Signature Pages Follow]

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SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the date first written above.

APPLIED POWER INC.

By: /s/

Name:
Title:

APW TOOLS & SUPPLIES, INC.

By: /s/

Name:
Title:

VERSA TECHNOLOGIES, INC.

By: /s/

Name:
Title:

APPLIED POWER INVESTMENTS II, INC.

By: /s/

Name:
Title:

COLUMBUS MANUFACTURING LLC

By: APPLIED POWER INC.

By: /s/

Name:
Title:

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Trustee:

BANK ONE TRUST COMPANY, N.A.,
as Trustee

By: /s/

Name:
Title:

FOR OFFERINGS TO QUALIFIED INSTITUTIONAL
BUYERS PURSUANT TO RULE 144A AND TO
CERTAIN PERSONS IN OFFSHORE
TRANSACTIONS IN RELIANCE
ON REGULATION S

PROVISIONS RELATING TO INITIAL NOTES,
PRIVATE EXCHANGE NOTES,
AND EXCHANGE NOTES

1. Definitions.

1.1 Certain Definitions.

For the purposes of this Appendix the following terms shall have the meanings indicated below, provided that all capitalized terms used but not defined shall have the meanings given such terms in the Indenture:

"Depository" means The Depository Trust Company, its nominees and

their respective successors and assigns.

"Exchange Notes" means the 13% Series B Senior Subordinated Notes due

2009 to be issued pursuant to this Indenture in connection with a Registered Exchange Offer pursuant to a Registration Rights Agreement.

"Initial Purchasers" means Credit Suisse First Boston Corporation and

Goldman, Sachs & Co.

"Initial Notes" means \$200,000,000 principal amount of 13% Series A

Senior Subordinated Notes due 2009, issued on August 1, 2000 in a transaction exempt from the registration requirements of the Securities Act.

"Private Exchange" means the offer by the Company, pursuant to a

Registration Rights Agreement, to the Initial Purchasers to issue and deliver to the Initial Purchasers, in exchange for the Initial Notes held by the Initial Purchasers as part of their initial distribution, a like aggregate principal amount of Private Exchange Notes.

"Private Exchange Notes" means the 13% Senior Subordinated Private

Exchange Notes due 2009, if any, to be issued

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pursuant to this Indenture to the Initial Purchasers in a Private Exchange.

"Purchase Agreement" means, with respect to the Initial Notes issued

on August 1, 2000, the Purchase Agreement dated July 21, 2000, among the Company, the Subsidiary Guarantors and the Initial Purchasers.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Registered Exchange Offer" means the offer by the Company, pursuant

to a Registration Rights Agreement, to certain Holders of Initial Notes, to issue and deliver to such Holders, in exchange for such Initial Notes, a like aggregate principal amount of Exchange Notes registered under the Securities Act.

"Registration Rights Agreement" means, with respect to the Initial

Notes issued on August 1, 2000, the Registration Rights Agreement dated August 1, 2000 among the Company, the Subsidiary Guarantors and the Initial Purchasers.

"Securities" means the Initial Notes, the Exchange Notes and the

Private Exchange Notes, treated as a single class.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Custodian" means the custodian with respect to a Global

Security (as appointed by the Depository), or any successor person thereto and shall initially be the Trustee.

"Shelf Registration Statement" means the shelf registration statement

issued by the Company, in connection with the offer and sale of Initial Notes,
Exchange Notes or Private Exchange Notes, pursuant to a Registration Rights
Agreement.

"Transfer Restricted Securities" means Securities that bear or are

required to bear the legend set forth in Section 2.3(b) hereto.

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1.2 Other Definitions.

Term -----	Defined in Section: -----
"Agent Members"..... -----	2.1(b)
"Global Security"..... -----	2.1(a)
"Regulation S"..... -----	2.1(a)
"Rule 144A"..... -----	2.1(a)

2. The Securities.

2.1 Form and Dating.

On the Issue Date, \$200,000,000 of the Initial Notes are being offered
and sold by the Company pursuant to the Purchase Agreement.

(a) Global Securities. Initial Notes offered and sold to a QIB in

reliance on Rule 144A under the Securities Act ("Rule 144A") or in reliance on

Regulation S under the Securities Act ("Regulation S"), in each case as provided

in the Purchase Agreement, shall be issued initially in the form of one or more
permanent global Securities in definitive, fully registered form without
interest coupons with the global securities legend and, in the case of Initial
Notes, the restricted securities legend set forth in Exhibit 1 hereto (each, a

"Global Security"), which shall be deposited on behalf of the purchasers of the

Initial Notes represented thereby with the Trustee as custodian for the
Depository (or with such other custodian as the Depository may direct), and
registered in the name of the Depository or a nominee of the Depository, duly
executed by the Company and authenticated by the Trustee as hereinafter
provided. The aggregate principal amount of the Global Securities may from time
to time be increased or decreased by adjustments made on the records of the
Trustee and the Depository or its nominee as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a

Global Security deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with
this Section 2.1(b), authenticate and deliver initially one or more Global
Securities that (a) shall be registered in the name of the Depository for such
Global Security or Global Securities or the nominee of such Depository and (b)
shall be delivered by the Trustee to such Depository or pursu-

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ant to such Depository's instructions or held by the Trustee as custodian for
the Depository.

Members of, or participants in, the Depository ("Agent Members") shall

have no rights under this Indenture with respect to any Global Security held on
their behalf by the Depository or by the Trustee as the custodian of the
Depository or under such Global Security, and the Depository may be treated by
the Company, the Subsidiary Guarantors, the Trustee and any agent of the
Company, the Subsidiary Guarantors or the Trustee as the absolute owner of such
Global Security for all purposes whatsoever. Notwithstanding the foregoing,
nothing herein shall prevent the Company, the Subsidiary Guarantors, the Trustee
or any agent of the Company, the Subsidiary Guarantors or the Trustee from
giving effect to any written certification, proxy or other authorization

furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of such Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

(c) Certificated Securities. Except as provided in this Section 2.1

or Section 2.3 or 2.4 of this Appendix, owners of beneficial interests in Global Securities will not be entitled to receive physical delivery of certificated Securities.

2.2 Authentication. The Trustee shall authenticate and deliver: (1)

On the Issue Date, \$200.0 million 13% Series A Senior Subordinated Notes due 2009 and (2) Exchange Notes or Private Exchange Notes for issue in a Registered Exchange Offer or a Private Exchange, respectively, in exchange for a like principal amount of Initial Notes, in each case upon a written order of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Notes is to be authenticated and whether the Securities are to be Initial Notes, Exchange Notes or Private Exchange Notes.

2.3 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities.

(i) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depositary, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depositary therefor. A transferor of a beneficial interest in a Global Security

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shall deliver to the Registrar a written order given in accordance with the Depositary's procedures containing information regarding the participant account of the Depositary to be credited with a beneficial interest in the Global Security. The Registrar shall, in accordance with such instructions instruct the Depositary to credit to the account of the Person specified in such instructions a beneficial interest in the Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.

(ii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4 of this Appendix), a Global Security may not be transferred as a whole except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(iii) In the event that a Global Security is exchanged for Securities in definitive registered form pursuant to Section 2.4 of this Appendix or Section 2.09 of the Indenture, prior to the consummation of a Registered Exchange Offer or the effectiveness of a Shelf Registration Statement with respect to such Securities, such Securities may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 (including the certification requirements set forth on the reverse of the Initial Notes intended to ensure that such transfers comply with Rule 144A or Regulation S, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(b) Legend.

(i) Except as permitted by the following paragraphs (ii), (iii) and (iv), each Security certificate evidencing Initial Notes and Private Exchange Notes (and all Securities issued in exchange therefor or in substitution thereof, other than Exchange Notes) shall bear a legend in substantially the following form:

"THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF

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SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF APPLIED POWER INC. THAT (A) THIS NOTE MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (i) INSIDE THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (ii) OUTSIDE THE UNITED STATES IN A TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (iii) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iv) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iv) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES; AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE."

(ii) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by a Global Security) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the Holder thereof to exchange such Transfer Restricted Security for a certificated Security that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the Holder certifies in writing to the Registrar that its request for such exchange was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Security).

(iii) After a transfer of any Initial Notes or Private Exchange Notes pursuant to, and during the period of the effectiveness of, a Shelf Registration Statement with respect to such Initial Notes or Private Exchange Notes, as the case may be, all requirements pertaining to legends on such Initial Notes or such Private Exchange Notes will cease to apply, but the requirements requiring such Initial Notes or such Private Exchange Notes issued to certain Holders be issued in global form will continue to ap-

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ply, and Initial Notes or Private Exchange Notes in global form without legends will be available to the transferee of the Holder of such Initial Notes or Private Exchange Notes upon exchange of such transferring Holder's Initial Notes or Private Exchange Notes or directions to transfer such Holder's interest in the Global Security, as applicable.

(iv) Upon the consummation of a Registered Exchange Offer with respect to the Initial Notes pursuant to which Holders of such Initial Notes are offered Exchange Notes in exchange for their Initial Notes, all requirements pertaining to such Initial Notes that Initial Notes issued to certain Holders be issued in global form will continue to apply and Initial Notes in global form with the restricted securities legend set forth in Exhibit 1 hereto will be available to Holders of such Initial Notes that do -----
not exchange their Initial Notes, and Exchange Notes in global form without the restricted securities legend set forth in Exhibit 1 hereto will be -----
available to Holders that exchange such Initial Notes in such Registered Exchange Offer.

(v) Upon the consummation of a Private Exchange with respect to the Initial Notes pursuant to which Holders of such Initial Notes are offered Private Exchange Notes in exchange for their Initial Notes, all requirements pertaining to such Initial Notes that Initial Notes issued to certain Holders be issued in global form will still apply, and Private Exchange Notes in global form with the restricted securities legend set forth in Exhibit 1 hereto will be available to Holders that exchange such -----
Initial Notes in such Private Exchange.

(c) Cancellation or Adjustment of Global Security. At such time as -----
all beneficial interests in a Global Security have either been exchanged for certificated Securities, redeemed, repurchased or canceled, such Global Security shall be returned to the Depositary for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for certificated Securities, redeemed, repurchased or canceled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

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(d) Obligations with Respect to Transfers and Exchanges of -----
Securities.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate certificated Securities and Global Securities at the Registrar's or any co-registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.09, 3.06, 4.14, 4.15 and Section 9.05 of the Indenture).

(iii) The Registrar or any co-registrar shall not be required to register the transfer of or exchange of (a) any certificated Security selected for redemption in whole or in part pursuant to Article III of the Indenture, except the unredeemed portion of any certificated Security being redeemed in part, or (b) any Security for a period beginning 15 days before the mailing of a notice of an offer to repurchase or redeem Securities or 15 days before an Interest Payment Date.

(iv) Prior to the due presentation for registration of transfer of any Security, the Company, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Company, the Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(v) All Securities issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Securities surrendered upon such transfer or exchange.

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(e) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture and the Securities, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

2.4 Certificated Securities.

(a) A Global Security deposited with the Depository or with the Trustee as custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of certificated Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 and (i) the Depository noti-

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fies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a "clearing agency" registered under the Exchange Act and a successor depository is not

appointed by the Company within 90 days of such notice, (ii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of certificated Securities under the Indenture or (iii) if there shall have occurred and be continuing an Event of Default with respect to the Securities.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section shall be surrendered by the Depository to the Trustee, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of certificated Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section shall be executed, authenticated and delivered only in denominations of \$1,000 and any integral multiple thereof and registered in such names as the Depository shall direct. Any certificated Initial Note delivered in exchange for an interest in the Global Security shall, except as otherwise provided by Section 2.3(b), bear the restricted securities legend set forth in Exhibit 1 hereto.

(c) Subject to the provisions of Section 2.4(b), the registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Securities.

(d) In the event of the occurrence of any of the events specified in Section 2.4(a) above, the Company will promptly make available to the Trustee a reasonable supply of certificated Securities in definitive, fully registered form without interest coupons.

EXHIBIT 1

TO RULE 144A/REGULATION S

APPENDIX

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN,

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[Restricted Securities Legend]

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS NOTE IS HEREBY NOTIFIED THAT THE SELLER OF THIS NOTE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS NOTE AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THIS NOTE MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (i) INSIDE THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (ii) OUTSIDE THE UNITED STATES IN A TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (iii) PURSUANT TO AN

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EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iv) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iv) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS NOTE FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

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SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

<TABLE>
<CAPTION>

Date of Exchange	Signature of authorized officer of Trustee or Securities Custodian	Amount of Decrease in Principal Amount of this Global Security	Amount of Increase in Principal Amount of this Global Security	Principal Amount of this Global Security following such decrease or increase
<S>	<C>	<C>	<C>	<C>

</TABLE>

EXHIBIT A

[FORM OF INITIAL NOTE]

CUSIP No.:

APPLIED POWER INC.

13% SERIES A SENIOR SUBORDINATED NOTE DUE 2009

No. \$

APPLIED POWER INC., a Wisconsin corporation (the "Company", which term includes any successor entity), for value received, promises to pay to _____ or registered assigns, the principal sum of _____, on May 1, 2009.

Interest Payment Dates: May 1 and November 1

Record Dates: April 15 and October 15

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

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IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

APPLIED POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Dated: [], []

Certificate of Authentication

This is one of the 13% Series A Senior Subordinated Notes due 2009 referred to in the within-mentioned Indenture.

BANK ONE TRUST COMPANY, N.A.
as Trustee

Dated: [], [] By: _____
Authorized Signatory

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(REVERSE OF SECURITY)

1. Interest. APPLIED POWER INC., a Wisconsin corporation (the

"Company"), promises to pay interest on the principal amount of this Note at the

rate per annum shown above; provided, however, that if a Registration Default (as defined in the Registration Rights Agreement) occurs, additional interest will accrue on this Note at a rate of 0.50% per annum for the first 90-day period immediately following the occurrence of such Registration Default regardless of the number of such Registration Defaults (such rate increasing by an additional 0.50% per annum with respect to each subsequent 90-day period) up to a maximum additional interest rate of 2.0% per annum, from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured, calculated on the principal amount of this Note as of the date on which such interest is payable. Such interest is payable in addition to any other interest payable from time to time with respect to this Note. The Trustee will not be deemed to have notice of a Registration Default until it shall have received actual notice of such Registration Default. Interest on the Notes will accrue from the most recent date on which interest has been paid or, if no interest has been paid, from August 1, 2000. The Company will pay interest semi-annually in arrears on each Interest Payment Date, commencing November 1, 2000. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Company shall pay interest on overdue principal at the rate borne by the Notes plus 1% per annum and on overdue installments of interest (without regard to any applicable grace periods) at such higher rate to the extent lawful.

2. Method of Payment. The Company shall pay interest on the Notes

(except defaulted interest) to the Persons who are the registered Holders at the close of business on the Record Date immediately preceding the Interest Payment Date even if the Notes are cancelled on registration of transfer or registration of exchange after such Record Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company shall pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts ("U.S. Legal Tender"). However,

the Company may pay principal and interest by its check payable in such U.S. Legal Tender. The Company may

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deliver any such interest payment to the Paying Agent or to a Holder at the Holder's registered address.

3. Paying Agent and Registrar. Initially, Bank One Trust Company,

N.A. (the "Trustee") will act as Paying Agent and Registrar. The Company may change any Paying Agent, Registrar or co-Registrar without notice to the Holders.

4. Indenture and Guarantees. The Company issued the Notes under an

Indenture, dated as of August 1, 2000 (the "Indenture"), among the Company, the

Subsidiary Guarantors and the Trustee. This Note is one of a duly authorized issue of Initial Notes of the Company designated as its 13% Series A Senior Subordinated Notes due 2009. The Initial Notes and any Private Exchange Notes and Exchange Notes issued pursuant to the Indenture are treated as a single class of securities under the Indenture. Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code (S) (S) 77aaa-77bbb) (the "TIA"), as in effect on the date of the Indenture. Notwithstanding anything

to the contrary herein, the Notes are subject to all such terms, and Holders of Notes are referred to the Indenture and the TIA for a statement of them. The Notes are general unsecured obligations of the Company. To the extent of any conflict between the terms of the Notes and the Indenture, the applicable terms of the Indenture shall govern. The Notes are entitled to the benefits of the Guarantees by the Subsidiary Guarantors made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Trustee, the Holders and the Subsidiary Guarantors.

5. Redemption.

(a) Optional Redemption. Except as set forth below, the Notes will

not be redeemable at the option of the Company prior to May 1, 2007. On and after May 1, 2007, the Notes will be redeemable, at the Company's option, in whole or in part, at any time or from time to time, upon not less than 30 nor

more than 60 days' prior notice mailed by first-class mail to each Holder's registered address, at the following redemption prices (expressed in percentages of principal amount), plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on May 1 of the years set forth below:

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Period -----	Redemption Price -----
2007.....	102.170%
2008 and thereafter.....	100.000%

(b) Optional Redemption Upon Public Equity Offerings. In addition,

at any time and from time to time prior to May 1, 2003, the Company may redeem in the aggregate up to 35% of the original principal amount of the Notes with the net cash proceeds from one or more Public Equity Offerings, at a redemption price (expressed as a percentage of principal amount) of 113% plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record of the relevant record date to receive interest due on the relevant interest payment date); provided, that (1) at least 65% of the aggregate principal amount of the Notes originally outstanding must remain outstanding after the occurrence of each such redemption and (2) each such redemption must occur within 75 days after the consummation of the related Public Equity Offering.

6. Notice of Redemption. Notice of redemption will be mailed at

least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address. Notes in denominations of \$1,000 may be redeemed only in whole. Notes in denominations larger than \$1,000 may be redeemed in part but only in multiples of \$1,000.

Except as set forth in the Indenture, if monies for the redemption of the Notes called for redemption shall have been deposited with the Paying Agent for redemption on such Redemption Date, then, unless the Company defaults in the payment of such Redemption Price plus accrued and unpaid interest, if any, the Notes called for redemption will cease to bear interest from and after such Redemption Date and the only right of the Holders of such Notes will be to receive payment of the Redemption Price plus accrued and unpaid interest, if any.

7. Offers to Purchase. Sections 4.14, 4.15 and 4.23 of the

Indenture provide that, in the event of certain Asset Dispositions, upon the occurrence of a Change of Control and in the event the Company has Excess Cash Flow for any fiscal year commencing with fiscal 2001, and subject to further limitations contained therein, the Company will make an offer to purchase certain amounts of the Notes in accordance with the procedures set forth in the Indenture.

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8. Registration Rights. Pursuant to the terms, and subject to the

provisions of the Registration Rights Agreement, the Company will be obligated to consummate an exchange offer pursuant to which the Holder of this Note shall have the right to exchange this Note for the Company's 13% Series B Senior Subordinated Notes due 2009 in the form of Exchange Notes, which shall have been registered under the Securities Act, or the Company's 13% Senior Subordinated Private Exchange Notes due 2009 (the "Private Exchange Notes"), in each case in

like principal amount and having terms identical in all material respects to the Initial Notes. The Holders of the Initial Notes shall be entitled to receive certain additional interest payments if such exchange offer is not consummated and upon certain other conditions, all pursuant to and in accordance with the terms of the Registration Rights Agreement. The Company shall notify the Trustee of the amount of any such payments.

9. Subordination.

The Notes are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full in cash of all Senior Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed. Each Holder by his acceptance hereof agrees to be bound by such provisions and authorizes and expressly directs the Trustee, on his behalf, to take such action as may be necessary or appropriate to effectuate the subordination provided for in the Indenture and appoints the Trustee his attorney-in-fact for such purposes.

10. Denominations; Transfer; Exchange. The Notes are in registered

form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000. A Holder shall register the transfer of or exchange of Notes in accordance with the terms, and subject to the provisions of the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain transfer taxes or similar governmental charges payable in connection therewith as permitted by the Indenture. The Registrar need not register the transfer of or exchange of any Notes or portions thereof selected for redemption (except, in the case of Notes to be redeemed in part, the portion of such Notes not to be redeemed) or any Note for a period beginning 15 days before the mailing of a notice of an offer to repurchase or a notice of redemption or 15 days before any Interest Payment Date.

11. Persons Deemed Owners. The registered Holder of a Note shall be

treated as the owner of it for all purposes.

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12. Unclaimed Money. If money for the payment of principal or

interest remains unclaimed for two years, the Trustee and the Paying Agent will pay the money back to the Company (subject to any applicable abandoned property law). After that, all liability of the Trustee and such Paying Agent with respect to such money shall cease.

13. Discharge Prior to Redemption or Maturity. If the Company at any

time deposit with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient to pay the principal of and interest on the Notes to redemption or maturity and complies with the other provisions of the Indenture relating thereto, the Company and the Subsidiary Guarantors will be discharged from certain provisions of the Indenture and the Notes and the Guarantees (including certain covenants, but excluding the Company's obligation to pay the principal of and interest on the Notes).

14. Amendment; Supplement; Waiver. Subject to certain exceptions,

the Indenture or the Notes or the Guarantees may be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and any existing Default or Event of Default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Without notice to or consent of any Holder, the parties thereto may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, provide for uncertificated Notes in addition to or in place of certificated Notes, or comply with Article Five of the Indenture or make any other change that does not adversely affect in any material respect the rights of any Holder of a Note.

15. Restrictive Covenants. The Indenture imposes certain limitations

on the ability of the Company and its Restricted Subsidiaries to, among other things, incur additional Indebtedness, make payments in respect of its Capital Stock or certain Indebtedness, enter into transactions with Affiliates, create dividend or other payment restrictions affecting Restricted Subsidiaries, merge or consolidate with any other Person, sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets or adopt a plan of liquidation. Such limitations are subject to a number of important qualifications and exceptions. The Company must annually report to the Trustee on compliance with such limitations.

16. Successors. When a successor assumes, in accordance with the

Indenture, all the obligations of its predeces-

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sor under the Notes and the Indenture, the predecessor will be released from those obligations.

17. Defaults and Remedies. If an Event of Default occurs and is

continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of Notes then outstanding may declare all the Notes to be due and payable in the manner, at the time and with the effect provided in the Indenture. Certain events of bankruptcy and insolvency are Events of Default which will result in the Notes being due and payable immediately upon the occurrence of such Events of Default. Holders of Notes may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the Notes unless it has received indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the

Notes then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Notes notice of any continuing Default or Event of Default (except a Default in payment of principal or interest) if it determines that withholding notice is in their interest.

18. Trustee Dealings with Company. The Trustee under the Indenture, _____ in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company, the Subsidiary Guarantors or their respective Affiliates as if it were not the Trustee.

19. No Recourse Against Others. No past, present or future _____ equityholder, member of the Board of Directors, officer, employee or incorporator, as such, of the Company or the Subsidiary Guarantors shall have any liability for any obligation of the Company or the Subsidiary Guarantors under the Notes or the Indenture or the Guarantees or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of a Note by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

20. Authentication. This Note shall not be valid until the Trustee _____ or Authenticating Agent manually signs the certificate of authentication on this Note.

21. Governing Law. The Laws of the State of New York shall govern _____ this Note and the Indenture (and the Guarantees relating thereto).

22. Abbreviations and Defined Terms. Customary abbreviations may be _____ used in the name of a Holder of a Note or an

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assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

23. CUSIP Numbers. Pursuant to a recommendation promulgated by the _____ Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes as a convenience to the Holders of the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers printed hereon.

24. Indenture. Each Holder, by accepting a Note, agrees to be bound _____ by all of the terms and provisions of the Indenture, as the same may be amended from time to time.

25. Holders' Compliance with Registration Rights Agreement. Each _____ Holder of a Note, by acceptance hereof, acknowledges and agrees to the provisions of the Registration Rights Agreement, including, without limitation, the obligations of the Holders with respect to a registration and the indemnification of the Company to the extent provided therein.

The Company will furnish to any Holder of a Note upon written request and without charge a copy of the Indenture. Requests may be made to: Applied Power Inc., 6100 North Baker Road, Glendale, Wisconsin 53209, Attention: Chief Financial Officer.

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ASSIGNMENT FORM

If you the Holder want to assign this Note, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Note to:

(Print or type name, address and zip code
and social security or tax ID number of assignee)

and irrevocably appoint _____, agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____ Signed: _____
(Sign exactly as your name appears
on the other side of this Note)

Signature Guarantee: _____

(Signature must be guaranteed by an "eligible guarantor institution," that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended).

In connection with any transfer of this Note occurring prior to the date which is the earlier of (i) the date of the declaration by the SEC of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "Securities Act") covering resales of this Note (which

effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) two years from date of original issuance, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and that this Note is being transferred:

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[Check One]

- (1) ___ to the Company or a subsidiary thereof; or
- (2) ___ pursuant to and in compliance with Rule 144A under the Securities Act; or
- (3) ___ outside the United States to a "foreign person" in compliance with Rule 904 of Regulation S under the Securities Act; or
- (4) ___ pursuant to the exemption from registration provided by Rule 144 under the Securities Act; or
- (5) ___ pursuant to an effective registration statement under the Securities Act; or
- (6) ___ pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; provided that if box (3), (4) or (6) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Trustee or the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Appendix to the Indenture shall have been satisfied.

Date: _____ Signed: _____
(Sign exactly as your name appears
on the other side of this Security)

Signature Guarantee: _____

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TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____ Signed: _____
NOTICE: To be executed by
an executive officer

[OPTION OF HOLDER TO ELECT PURCHASE]

If you want to elect to have this Note purchased by the Company pursuant to Section 4.14, Section 4.15 or Section 4.23 of the Indenture, check the appropriate box:

- Section 4.14
- Section 4.15
- Section 4.23

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.14, Section 4.15 or Section 4.23 of the Indenture, state the amount you elect to have purchased:

\$ _____

Dated: _____

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Note in every particular without alteration or enlargement or any change whatsoever and be guaranteed by the endorser's bank or broker.

Signature Guarantee: _____

(Signature must be guaranteed by an "eligible guarantor institution," that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended).

EXHIBIT B

[FORM OF EXCHANGE NOTE AND PRIVATE EXCHANGE NOTE]

CUSIP No.:

APPLIED POWER INC.

13% SERIES B SENIOR SUBORDINATED NOTE DUE 2009

No. _____ \$ _____

APPLIED POWER INC., a Wisconsin corporation (the "Company", which term includes any successor entity), for value received, promises to pay to _____ or registered assigns, the principal sum of _____, on May 1, 2009.

Interest Payment Dates: May 1 and November 1

Record Dates: April 15 and October 15

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

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IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

APPLIED POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Dated: [], []

This is one of the 13% Series B Senior Subordinated Notes due 2009 referred to in the within-mentioned Indenture.

BANK ONE TRUST COMPANY, N.A.,
as Trustee

Dated: [], []

By: _____
Authorized Signatory

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(REVERSE OF SECURITY)

13% SERIES B SENIOR SUBORDINATED NOTE DUE 2009

1. Interest. APPLIED POWER INC., a Wisconsin corporation (the "Company"),

promises to pay interest on the principal amount of this Note at the rate per annum shown above. Interest on the Notes will accrue from the most recent date on which interest has been paid or, if no interest has been paid, from August 1, 2000. The Company will pay interest semi-annually in arrears on each Interest Payment Date, commencing November 1, 2000. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Company shall pay interest on overdue principal at the rate borne by the Notes plus 1% per annum and on overdue installments of interest (without regard to any applicable grace periods) at such higher rate to the extent lawful.

2. Method of Payment. The Company shall pay interest on the Notes (except

defaulted interest) to the Persons who are the registered Holders at the close of business on the Record Date immediately preceding the Interest Payment Date even if the Notes are cancelled on registration of transfer or registration of exchange after such Record Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company shall pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts ("U.S. Legal Tender"). However, the Company

may pay principal and interest by its check payable in such U.S. Legal Tender. The Company may deliver any such interest payment to the Paying Agent or to a Holder at the Holder's registered address.

3. Paying Agent and Registrar. Initially, Bank One Trust Company, N.A.

(the "Trustee") will act as Paying Agent. The Company may change any Paying

Agent, Registrar or co-Registrar without notice to the Holders.

4. Indenture and Guarantees. The Company issued the Notes under an

Indenture, dated as of August 1, 2000 (the "Indenture"), among the Company, the

Subsidiary Guarantors and the Trustee. This Note is one of a duly authorized issue of Initial Notes of the Company designated as its 13% Series B Senior Subordinated Notes due 2009. Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to

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the Trust Indenture Act of 1939 (15 U.S. Code (S) (S) 77aaa-77bbbb) (the "TIA"),

as in effect on the date of the Indenture. Notwithstanding anything to the contrary herein, the Notes are subject to all such terms, and Holders of Notes are referred to the Indenture and the TIA for a statement of them. The Notes are general unsecured obligations of the Company. To the extent of any conflict between the terms of the Notes and the Indenture, the applicable terms of the Indenture shall govern. The Notes are entitled to the benefits of the Guarantees by the Subsidiary Guarantors made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Trustees, the Holders and any Subsidiary Guarantors.

5. Redemption.

(a) Optional Redemption. Except as set forth below, the Notes will

not be redeemable at the option of the Company prior to May 1, 2007. On and after May 1, 2007, the Notes will be redeemable, at the Company's option, in whole or in part, at any time or from time to time, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each Holder's

registered address, at the following redemption prices (expressed in percentages of principal amount), plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on May 1 of the years set forth below:

Period	Redemption Price
2007.....	102.170%
2008 and thereafter.....	100.000%

(b) Optional Redemption Upon Public Equity Offerings. In addition,

at any time and from time to time prior to May 1, 2003, the Company may redeem in the aggregate up to 35% of the original principal amount of the Notes with the net cash proceeds from one or more Public Equity Offerings, at a redemption price (expressed as a percentage of principal amount) of 113% plus accrued and unpaid interest to the redemption date (subject to the right of Holders of record in the relevant record date to receive interest due on the relevant interest payment date); provided, that (1) at least 65% of the aggregate principal amount of the Notes originally outstanding (including the original principal amount of any Additional Notes) must re-

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main outstanding after the occurrence of each such redemption and (2) each such redemption must occur within 75 days after the consummation of the related Public Equity Offering.

6. Notice of Redemption. Notice of redemption will be mailed at

least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address. Notes in denominations of \$1,000 may be redeemed only in whole. Notes in denominations larger than \$1,000 may be redeemed in part but only in multiples of \$1,000.

Except as set forth in the Indenture, if monies for the redemption of the Notes called for redemption shall have been deposited with the Paying Agent for redemption on such Redemption Date, then, unless the Company defaults in the payment of such Redemption Price plus accrued and unpaid interest, if any, the Notes called for redemption will cease to bear interest from and after such Redemption Date and the only right of the Holders of such Notes will be to receive payment of the Redemption Price plus accrued and unpaid interest, if any.

7. Offers to Purchase. Sections 4.14, 4.15 and 4.23 of the Indenture

provide that, in the event of certain Asset Dispositions, upon the occurrence of a Change of Control and in the event the Company has Excess Cash Flow for any fiscal year commencing with fiscal 2001, and subject to further limitations contained therein, the Company will make an offer to purchase certain amounts of the Notes in accordance with the procedures set forth in the Indenture.

8. Subordination.

The Notes are subordinated in right of payment, in the manner and to the extent set forth in the Indenture, to the prior payment in full in cash of all Senior Indebtedness of the Company, whether outstanding on the date of the Indenture or thereafter created, incurred, assumed or guaranteed. Each Holder by his acceptance hereof agrees to be bound by such provisions and authorizes and expressly directs the Trustee, on his behalf, to take such action as may be necessary or appropriate to effectuate the subordination provided for in the Indenture and appoints the Trustee his attorney-in-fact for such purposes.

9. Denominations; Transfer; Exchange. The Notes are in registered

form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000. A Holder shall register the transfer of or exchange of Notes in accordance with the terms, and subject to the provisions of the Indenture. The

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Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain transfer taxes or similar governmental charges payable in connection therewith as permitted by the Indenture. The Registrar need not register the transfer of or exchange of any Notes or portions thereof selected for redemption (except, in the case of Notes to be redeemed in part, the portion of such Notes not to be redeemed) or any Note for a period beginning 15 days before the mailing of a notice of an offer to repurchase or a notice of redemption or 15 days before any Interest Payment Date.

10. Persons Deemed Owners. The registered Holder of a Note shall be

treated as the owner of it for all purposes.

11. Unclaimed Money. If money for the payment of principal or

interest remains unclaimed for two years, the Trustee and the Paying Agent will pay the money back to the Company (subject to any applicable abandoned property law). After that, all liability of the Trustee and such Paying Agent with respect to such money shall cease.

12. Discharge Prior to Redemption or Maturity. If the Company at any

time deposit with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient to pay the principal of and interest on the Notes to redemption or maturity and complies with the other provisions of the Indenture relating thereto, the Company and the Subsidiary Guarantors will be discharged from certain provisions of the Indenture, the Notes and the Guarantees (including certain covenants, but excluding the Company's obligation to pay the principal of and interest on the Notes).

13. Amendment; Supplement; Waiver. Subject to certain exceptions,

the Indenture, the Notes or the Guarantees may be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and any existing Default or Event of Default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Without notice to or consent of any Holder, the parties thereto may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, provide for uncertificated Notes in addition to or in place of certificated Notes, or comply with Article Five of the Indenture or make any other change that does not adversely affect in any material respect the rights of any Holder of a Note.

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14. Restrictive Covenants. The Indenture imposes certain limitations

on the ability of the Company and its Restricted Subsidiaries to, among other things, incur additional Indebtedness, make payments in respect of its Capital Stock or certain Indebtedness, enter into transactions with Affiliates, create dividend or other payment restrictions affecting Restricted Subsidiaries, merge or consolidate with any other Person, sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets or adopt a plan of liquidation. Such limitations are subject to a number of important qualifications and exceptions. The Company must annually report to the Trustee on compliance with such limitations.

15. Successors. When a successor assumes, in accordance with the

Indenture, all the obligations of its predecessor under the Notes and the Indenture, the predecessor will be released from those obligations.

16. Defaults and Remedies. If an Event of Default occurs and is

continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of Notes then outstanding may declare all the Notes to be due and payable in the manner, at the time and with the effect provided in the Indenture. Certain events of bankruptcy and insolvency are Events of Default which will result in the Notes being due and payable immediately upon the occurrence of such Events of Default. Holders of Notes may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the Notes unless it has received indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Notes then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Notes notice of any continuing Default or Event of Default (except a Default in payment of principal or interest) if it determines that withholding notice is in their interest.

17. Trustee Dealings with Company. The Trustee under the Indenture,

in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company, the Subsidiary Guarantors or their respective Affiliates as if it were not the Trustee.

18. No Recourse Against Others. No past, present or future

equityholder, member of the Board of Directors, officer, employee or incorporator, as such, of the Company or the Subsidiary Guarantors shall have any liability for any obligation of the Company or the Subsidiary Guarantors under the Notes or the Indenture or the Guarantees or for any claim based on, in

respect of or by reason of, such obligations or their creation. Each Holder of a Note by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

19. Authentication. This Note shall not be valid until the Trustee

or Authenticating Agent manually signs the certificate of authentication on this Note.

20. Governing Law. The Laws of the State of New York shall govern

this Note and the Indenture (and the Guarantees relating thereto).

21. Abbreviations and Defined Terms. Customary abbreviations may be

used in the name of a Holder of a Note or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

22. CUSIP Numbers. Pursuant to a recommendation promulgated by the

Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes as a convenience to the Holders of the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers printed hereon.

23. Indenture. Each Holder, by accepting a Note, agrees to be bound

by all of the terms and provisions of the Indenture, as the same may be amended from time to time.

The Company will furnish to any Holder of a Note upon written request and without charge a copy of the Indenture. Requests may be made to: Applied Power Inc., 6100 North Baker Road, Glendale, Wisconsin 53209, Attention: Chief Financial Officer.

ASSIGNMENT FORM

If you the Holder want to assign this Note, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Note to:

(Print or type name, address and zip code
and social security or tax ID number of assignee)

and irrevocably appoint _____, agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____ Signed: _____
(Sign exactly as your name appears
on the other side of this Note)

Signature Guarantee: _____

(Signature must be guaranteed by an "eligible guarantor institution," that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended).

[In connection with any transfer of this Note occurring prior to the date which is the earlier of (i) the date of the declaration by the SEC of the effectiveness of a registration statement under the Securities Act of 1933, as amended (the "Securities Act") covering resales of this Note (which

effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) two years from date of original issuance, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and that this Note is being transferred:

[Check One]

- (1) to the Company or a subsidiary thereof; or
- (2) pursuant to and in compliance with Rule 144A under the Securities Act; or
- (3) outside the United States to a "foreign person" in compliance with Rule 904 of Regulation S under the Securities Act; or
- (4) pursuant to the exemption from registration provided by Rule 144 under the Securities Act; or
- (5) pursuant to an effective registration statement under the Securities Act; or
- (6) pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; provided that if box (3), (4) or (6) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Trustee or the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in the Appendix to the Indenture shall have been satisfied.

Date: _____ Signed: _____
 (Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: _____

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____ Signed: _____
 NOTICE: To be executed by an executive officer]/a/

 /a/ To be included in Private Exchange Notes only.

[OPTION OF HOLDER TO ELECT PURCHASE]

If you want to elect to have this Note purchased by the Company pursuant to Section 4.14, Section 4.15 or Section 4.23 of the Indenture, check the appropriate box:

- Section 4.14 []
- Section 4.15 []
- Section 4.23 []

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.14, Section 4.15 or Section 4.23 of the Indenture, state the amount you elect to have purchased:

\$ _____

Dated: _____
 NOTICE: The signature on this assignment must correspond with the name as it appears upon the

face of the within Note in every particular without alteration or enlargement or any change whatsoever and be guaranteed by the endorser's bank or broker.

Signature Guarantee: _____

(Signature must be guaranteed by an "eligible guarantor institution," that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended).

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EXHIBIT C

[FORM OF GUARANTEE]

GUARANTEE

Each of the undersigned (the "Subsidiary Guarantors"), jointly and

severally unconditionally guarantee on a senior subordinated basis (such
guarantee by each Subsidiary Guarantor being referred to herein as the
"Guarantee") (i) the due and punctual payment of the principal of and interest

on the Notes, subject to any applicable grace period, whether at maturity, by
acceleration or otherwise, the due and punctual payment of interest on the
overdue principal and interest, if any, on the Notes, to the extent lawful, and
the due and punctual performance of all other obligations of the Company to the
Holders or the Trustee all in accordance with the terms set forth in Article Ten
of the Indenture and (ii) in case of any extension of time of payment or renewal
of any Notes or any of such other obligations, that the same will be promptly
paid in full when due or performed in accordance with the terms of the extension
or renewal, whether at stated maturity, subject to any applicable grace period,
by acceleration or otherwise.

The obligations of each Subsidiary Guarantor to the Holders of Notes
and to the Trustee pursuant to the Guarantee and the Indenture are expressly set
forth in Article Ten of the Indenture, and reference is hereby made to such
Indenture for the precise terms of the Guarantee therein made.

No stockholder, officer, director, employee or incorporator, as such,
past, present or future, of each Subsidiary Guarantor shall have any liability
under the Guarantee by reason of his or its status as such stockholder, officer,
director, employee or incorporator.

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The Guarantee shall not be valid or obligatory for any purpose until
this certificate of authentication on the Notes upon which the Guarantee is
noted shall have been executed by the Trustee under the Indenture by the manual
signature of one of its authorized officers.

[GUARANTORS]

By: _____
Name:
Title:

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\$200,000,000

APPLIED POWER INC.

13% Senior Subordinated Notes Due 2009

PURCHASE AGREEMENT

July 21, 2000

Credit Suisse First Boston Corporation
Goldman, Sachs & Co.
As Representatives of the Several Purchasers,
c/o Credit Suisse First Boston Corporation,
Eleven Madison Avenue,
New York, N.Y. 10010-3629

Dear Sirs:

1. Introductory. Applied Power Inc. which intends to change its name to Actuant Corporation (the "Company") proposes, subject to the terms and conditions stated herein, to issue and sell to the several initial purchasers named in Schedule A hereto (the "Purchasers") U.S.\$200,000,000 principal amount of its 13% Senior Subordinated Notes Due 2009 ("Notes") to be issued under an indenture, dated as of August 1, 2000 (the "Indenture"), between the Company and Bank One Trust Company, N.A., as Trustee. The Notes will be guaranteed (the "Guarantees") on a senior subordinated, unsecured basis by each of the Company's wholly owned domestic subsidiaries listed on the signature pages hereof (collectively, the "Guarantors"). The Company and the Guarantors are collectively referred to herein as the "Issuers." The Notes and the Guarantees are collectively referred to herein as the "Offered Securities." The United States Securities Act of 1933, as amended, is herein referred to as the "Securities Act."

The Offered Securities are being sold in connection with (i) the spin-off (the "Spin-off") of Applied Power Inc.'s integrated electronics enclosures business from its tools and supplies and engineered solutions businesses and (ii) the Company's tender offer for, and consent solicitation with respect to, up to \$200,000,000 aggregate principal amount of its outstanding 8.75% Senior Subordinated Notes due 2009 (the "Tender Offer"), pursuant to the Company's offer to purchase dated June 30, 2000, as amended or supplemented. The Purchasers and direct and indirect transferees of the Offered Securities will be entitled to the benefits of a Registration Rights Agreement to be dated as of August 1, 2000 among the parties hereto (the "Registration Rights Agreement"), pursuant to which the Company has agreed, among other things, to file (a) a registration statement (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") registering the Notes or the Exchange Notes (as defined in the Registration Rights Agreement) under the Securities Act or (b) a shelf registration statement pursuant to Rule 415 under the Securities Act relating to the resale of the Notes by holders thereof or, if applicable, relating to the resale of Private Exchange Notes (as defined in the Registration Rights Agreement) by the Purchasers.

The Notes, the Exchange Notes, the Guarantees, the Indenture, the Registration Rights Agreement and this Agreement are herein collectively referred to as the "Basic Documents."

The Issuers hereby agree with the several Purchasers as follows:

2. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the several Purchasers that:

(a) A preliminary offering circular and an offering circular relating to the Offered Securities to be offered by the Purchasers have been prepared by the Company. Such preliminary offering circular (the "Preliminary Offering Circular") and offering circular (the "Offering Circular"), as supplemented as of the date of this Agreement are hereinafter collectively referred to as the "Offering Document." On the date of this Agreement, the Offering Document does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Offering Document based upon written information furnished to the Company by any Purchaser through Credit Suisse First Boston Corporation ("CSFBC") specifically for use therein, it being understood and agreed that the only such information is that described as such in Section 7(b) hereof.

(b) The Company has been duly organized and is validly existing as a corporation in active status under the laws of the State of Wisconsin and has corporate power and authority to own, lease and operate its

properties and to conduct its business as described in the Offering Document and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing (or equivalent status) in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing (or equivalent status) would not result in a Material Adverse Effect.

(c) Each significant subsidiary of the Company listed on Schedule B hereto (each a "Subsidiary" and, collectively, the -----

"Subsidiaries") has been duly organized and is validly existing as a corporation in good standing (or equivalent status) under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Document and is duly qualified as a foreign corporation to transact business and is in good standing (or equivalent status) in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing (or equivalent status) would not result in a Material Adverse Effect; except as otherwise disclosed in the Offering Document, all of the issued and outstanding capital stock of each such Subsidiary has been duly authorized and validly issued, is fully paid and non-assessable (except as otherwise provided in Section 180.0622(2)(b) of the Wisconsin Business Corporation Law, as judicially interpreted) and is owned by the Company, directly or through Subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity; none of the outstanding shares of capital stock of any Subsidiary was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary.

(d) Each Guarantor has been duly organized and is validly existing as a corporation in good standing (or equivalent status) under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Document and is duly qualified as a foreign corporation to transact business and is in good standing (or equivalent status) in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing (or equivalent status) would not result in a Material Adverse Effect; except as otherwise disclosed in the Offering Document, all of the issued and outstanding capital stock of each Guarantor has been duly authorized and validly issued, is fully paid and non-assessable (except as otherwise provided in Section 180.0622(2)(b) of the Wisconsin Business Corporation Law, as judicially interpreted) and is owned by the Company, directly or through Subsidiaries, free and clear of any

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security interest, mortgage, pledge, lien, encumbrance, claim or equity; none of the outstanding shares of capital stock of any Guarantor was issued in violation of the preemptive or similar rights of any securityholder of such Guarantor.

(e) The authorized, issued and outstanding capital stock of the Company is as set forth in the Offering Document in the Company's consolidated financial statements (except for subsequent issuances, if any, pursuant to reservations, agreements or employee benefit plans referred to in the Offering Document or pursuant to the exercise of convertible securities or options referred to in the Offering Document). The shares of issued and outstanding capital stock have been duly authorized and validly issued and are fully paid and non-assessable (except as otherwise provided in Section 180.0622(2)(b) of the Wisconsin Business Corporation Law, as judicially interpreted); none of the outstanding shares of capital stock was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(f) Each of the Issuers has the requisite corporate power and authority to execute, deliver and perform its obligations under the Indenture. The Indenture has been duly and validly authorized by the Issuers and meets the requirements for qualification under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"). The Notes have been duly and validly authorized by the Company. When the Notes are delivered and paid for pursuant to this Agreement on the Closing Date (as defined below), the Indenture will have been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery of the Indenture by the Trustee, such Notes will have been duly executed, authenticated, issued and delivered by the Company and will conform to the description thereof contained in the Offering Document and the Indenture and such Notes will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar

laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Enforceability Exceptions").

(g) No consent, approval, authorization or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement and the Registration Rights Agreement in connection with the issuance and sale of the Offered Securities by the Issuers except for filing with the Commission and for the order of the Commission declaring the Exchange Offer Registration Statement or the Shelf Registration Statement (each as defined in the Registration Rights Agreement) effective.

(h) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement and the transactions contemplated hereby have been duly and validly authorized by the Company. This Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms except that the enforcement thereof may be limited by the Enforceability Exceptions and except as any rights to indemnity or contribution hereunder may be limited by federal and state securities laws and public policy considerations.

(i) Each of the Issuers has the requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement. The Registration Rights Agreement has been duly and validly authorized by each of the Issuers (assuming the due authorization, execution and delivery thereof by the Purchasers), and when executed and delivered by each of the Issuers, will constitute a valid and legally binding agreement of each of the Issuers, enforceable against each of the Issuers in accordance with its terms except that the enforcement thereof may be limited by the Enforceability Exceptions and except as any rights to indemnity or contribution thereunder may be limited by

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federal and state securities laws and public policy considerations. The Offered Securities, the Indenture and the Registration Rights Agreement conform in all material respects to the descriptions thereof in the Offering Circular.

(j) The Guarantees have been duly authorized by each of the Guarantors; and when issued by the Guarantors in accordance with the terms of the Indenture and the Notes are delivered and paid for pursuant to this Agreement, the Guarantees will have been duly executed, issued and delivered and will be in the form contemplated by, and entitled to the benefits of, the Indenture and will constitute valid and legally binding obligations of each of the Guarantors, enforceable in accordance with their terms, except that the enforcement thereof may be limited by the Enforceability Exceptions.

(k) The Company has all requisite corporate power and authority to perform its obligations under its obligations under the Tender Offer and to consummate the transactions contemplated thereby. The Tender Offer and the transactions contemplated thereby have been duly and validly authorized by the Company.

(l) Each of the Issuers and the Subsidiaries possesses good and marketable title to all real property owned by it and good title to all other properties owned by it, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as (a) are described in the Offering Document or (b) do not, individually or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Issuers or any of the Subsidiaries; and all of the leases and subleases material to the business of the Issuers and the Subsidiaries, considered as one enterprise, and under which the Issuers or any of the Subsidiaries holds properties described in the Offering Document, are in full force and effect, and neither the Issuers nor any Subsidiary has any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Issuers or any Subsidiary under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Issuers or such Subsidiary to the continued possession of the leased or subleased premises under any such lease or sublease, except in any such case as could not reasonably be expected to result in a Material Adverse Effect.

(m) Each of the Issuers and the Subsidiaries possesses such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the business now operated by it; each of the Issuers and the Subsidiaries is in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not, individually or

in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not have a Material Adverse Effect; and none of the Issuers or any of the Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Governmental Licenses which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(n) No labor dispute with the employees of the Issuers and the Subsidiaries exists or, to the knowledge of the Issuers is imminent that might have a Material Adverse Effect.

(o) The Issuers and the Subsidiaries own, possess or can acquire on reasonable terms adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, "intellectual property rights") necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual prop-

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erty rights that, if determined adversely to the Issuers and the Subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(p) Except as described in the Offering Document and except as would not, individually or in the aggregate, result in a Material Adverse Effect, (A) none of the Issuers or the Subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, ground-water, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) each of the Issuers and the Subsidiaries has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance with their requirements, (C) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Issuers and the Subsidiaries and (D) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting any of the Issuers and the Subsidiaries relating to Hazardous Materials or any Environmental Laws.

(q) There is no action, suit, proceeding, inquiry or investigation before or brought by any court or governmental agency or body, domestic or foreign, now pending, or, to the knowledge of the Company, threatened, against or affecting the Company or any Subsidiary, which is required to be disclosed in the Offering Document (other than as disclosed therein), or which might reasonably be expected to result in a Material Adverse Effect, or which might reasonably be expected to materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder; the aggregate of all pending legal or governmental proceedings to which the Company or any Subsidiary is a party or of which any of their respective property or assets is the subject which are not described in the Offering Document, including ordinary routine litigation incidental to the business, could not reasonably be expected to result in a Material Adverse Effect.

(r) The financial statements included in the Offering Document present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their results of operations and cash flows for the periods shown, and except as otherwise disclosed in the Offering Document such financial statements have been prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis and the assumptions used in preparing the pro forma financial statements and the adjusted financial information included in the Offering Document provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma and adjusted adjustments give appropriate effect to those assumptions, and the pro forma and adjusted columns therein reflect the proper application of those adjustments to the

corresponding historical financial statement amounts.

(s) Since the date of the last audited financial statements included in the Offering Document, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company or any

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of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) except for regular quarterly dividends on the Company's common stock in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(t) None of the Issuers or the Subsidiaries is an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940 (the "Investment Company Act"); and none of the Issuers or the Subsidiaries is or, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Offering Document, will be an "investment company" as defined in the Investment Company Act.

(u) No securities of the same class (within the meaning of Rule 144A(d)(3) under the Securities Act) as the Offered Securities are listed on any national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system.

(v) The offer and sale of the Offered Securities in the manner contemplated by this Agreement will be exempt from the registration requirements of the Securities Act by reason of Section 4(2) thereof, Regulation D thereunder and Regulation S thereunder and it is not necessary to qualify an indenture in respect of the Offered Securities under the Trust Indenture Act.

(w) None of the Company or any of its affiliates or any person acting on its or their behalf (i) has, within the six-month period prior to the date hereof, offered or sold in the United States or to any U.S. person (as such terms are defined in Regulation S under the Securities Act) the Offered Securities or any security of the same class or series as the Offered Securities or (ii) has offered or will offer or sell the Offered Securities (A) in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act or (B) with respect to any such securities sold in reliance on Rule 903 of Regulation S ("Regulation S") under the Securities Act, by means of any directed selling efforts within the meaning of Rule 902(c) of Regulation S. The Company, its affiliates and any person acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S. The Company has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for this Agreement.

(x) The Company is subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

(y) The documents incorporated by reference in the Offering Document, when they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the "Exchange Act Regulations"), and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and any further documents so filed and incorporated by reference in the Offering Document or any further amendment or supplement thereto, when such documents are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the Exchange Act and the Exchange Act Regulations and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(z) None of the Issuers or any of the Subsidiaries is in violation of its charter or by-laws or in default in the performance or observance of any obligation, agreement, covenant or condition contained

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in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which any of the

Issuers or the Subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of any of the Issuers or the Subsidiaries is subject (collectively, "Agreements and Instruments"), except for such defaults as would not result in a Material Adverse Effect; and the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Offering Document (including the issuance and sale of the Offered Securities and the use of the proceeds from the sale of the Offered Securities as described in the Offering Document under the caption "Use of Proceeds") and compliance by the Issuers with their obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of any of the Issuers or the Subsidiaries pursuant to, the Agreements and Instruments (except for such conflicts, breaches, Repayment Events or defaults or liens, charges or encumbrances that would not result in a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter or by-laws of any of the Issuers or the Subsidiaries or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, government instrumentality or court, domestic or foreign, having jurisdiction over any of the Issuers or the Subsidiaries or any of their assets, properties or operations. As used herein, a "Repayment Event" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment (through acceleration or otherwise) of all or a portion of such indebtedness by any of the Issuers or the Subsidiaries other than the intended repayment of indebtedness described under "Use of Proceeds" in the Offering Document.

(aa) Except for the Registration Rights Agreement, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Rights Agreement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(bb) Each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP, who have certified certain of the financial statements included in, or incorporated by reference in, the Offering Document, is an independent public accountant as required by the Securities Act.

3. Purchase, Sale and Delivery of Offered Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to the Purchasers, and the Purchasers agree, severally and not jointly, to purchase from the Company, at a purchase price of 95.675% of the principal amount thereof, the respective principal amounts of Offered Securities set forth opposite the names of the Purchasers in Schedule A hereto.

The Company will deliver against payment of the purchase price therefor the Offered Securities in the form of one or more permanent global Offered Securities in definitive form (the "Global Securities") deposited with the Trustee as custodian for The Depository Trust Company ("DTC") and registered in the name of Cede & Co., as nominee for DTC. Interests in any permanent Global Securities will be held only in book-entry form through DTC, except in the limited circumstances described in the Offering Document. Payment for the Offered Securities shall be made by the Purchasers in federal (same day) funds by official bank check or checks or wire transfer to an account at a bank acceptable to CSFBC at the office of Cahill Gordon & Reindel, 80 Pine Street, New York, NY 10005, at 10:00 A.M. New York City time, on August 1, 2000, or at such other time not later than seven full business days thereafter as CSFBC and the Company determine, such date being herein referred to as the "Closing Date," against delivery to the Trustee as custodian for DTC of the Global Securities repre-

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senting all of the Offered Securities. The Global Securities will be made available for checking at the above office of Cahill Gordon & Reindel at least 24 hours prior to the Closing Date.

4. Representations by Purchasers; Resale by Purchasers. (a) Each Purchaser severally represents and warrants to the Issuers that it is an "accredited investor" within the meaning of Regulation D under the Securities Act.

(b) Each Purchaser severally acknowledges that the Offered Securities have not been registered under the Securities Act and may not be

offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act. Each Purchaser severally represents and agrees that it has offered and sold the Offered Securities, and will offer and sell the Offered Securities (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering and the Closing Date, only in accordance with Rule 903 or Rule 144A under the Securities Act ("Rule 144A"). Accordingly, neither such Purchaser nor its affiliates, nor any persons acting on its or their behalf, has engaged or will engage in any directed selling efforts with respect to the Offered Securities, and such Purchaser, its affiliates and all persons acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S. Each Purchaser severally agrees that, at or prior to confirmation of sale of the Offered Securities, other than a sale pursuant to Rule 144A, such Purchaser will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases the Offered Securities from it during the restricted period a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the "Securities Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the date of the commencement of the offering and the closing date, except in either case in accordance with Regulation S (or Rule 144A if available) under the Securities Act. Terms used above have the meanings given to them by Regulation S."

Terms used in this subsection (b) have the meanings given to them by Regulation S.

(c) Each Purchaser severally agrees that it and each of its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for any such arrangements with the other Purchasers or affiliates of the other Purchasers or with the prior written consent of the Company.

(d) Each Purchaser severally agrees that it and each of its affiliates will not offer or sell the Offered Securities in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act, including, but not limited to (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising. Each Purchaser severally agrees, with respect to resales made in reliance on Rule 144A of any of the Offered Securities, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Offered Securities has been made in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A.

(e) Each of the Purchasers severally represents and agrees that (i) it has not offered or sold and prior to the date six months after the date of issue of the Offered Securities will not offer or sell any Offered Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the

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United Kingdom within the meaning of the Public Offers of Securities Regulations 1995; (ii) it has complied and will comply with all applicable provisions of the Financial Services Act 1986 with respect to anything done by it in relation to the Offered Securities in, from or otherwise involving the United Kingdom; and (iii) it has only issued or passed on and will only issue or pass on in the United Kingdom any document received by it in connection with the issue of the Offered Securities to a person who is of a kind described in Article 11(3) of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996 or is a person to whom such document may otherwise lawfully be issued or passed on.

5. Certain Agreements. The Issuers agree with the several Purchasers that:

(a) The Issuers will advise CSFBC promptly of any proposal to amend or supplement the Offering Document and will not effect such amendment or supplementation without CSFBC's consent, which consent shall not be unreasonably withheld. If, at any time prior to the completion of the resale of the Offered Securities by the Purchasers, any event occurs as a result of which the Offering Document as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the

light of the circumstances under which they were made, not misleading, the Issuers promptly will notify CSFBC of such event and promptly will prepare, at their own expense, an amendment or supplement which will correct such statement or omission. Neither CSFBC's consent to, nor the Purchasers' delivery to offerees or investors of, any such amendment or supplement shall constitute a waiver of any of the conditions set forth in Section 6.

(b) The Issuers will furnish to CSFBC copies of any Preliminary Offering Circular, the Offering Circular and all amendments and supplements to such documents, in each case as soon as available and in such quantities as CSFBC requests, and the Issuers will furnish to CSFBC on the date hereof three copies of the Offering Document signed by a duly authorized officer of the Company, one of which will include the independent accountants' reports therein manually signed by such independent accountants (except that the Issuers do not need to provide an independent accountants' report of Deloitte & Touche for the Preliminary Offering Circular). At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will promptly furnish or cause to be furnished to CSFBC and, upon request, to each of the other Purchasers and, upon request of holders and prospective purchasers of the Offered Securities, to such holders and purchasers, copies of the information required to be delivered to holders and prospective purchasers of the Offered Securities pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto) in order to permit compliance with Rule 144A in connection with resales by such holders of the Offered Securities. The Company will pay the expenses of printing and distributing to the Purchasers all such documents.

(c) The Issuers will arrange for the qualification of the Offered Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions in the United States and Canada as CSFBC designates and will continue such qualifications in effect so long as required for the resale of the Offered Securities by the Purchasers, provided that none of the Issuers will be required to qualify as a foreign corporation or to file a general consent to service of process in any such state.

(d) During the period of ten years hereafter, the Company will furnish to CSFBC and, upon request, to each of the other Purchasers, as soon as practicable after the end of each fiscal year, a copy of its annual report to shareholders for such year; and the Company will furnish to CSFBC and, upon request, to each of the other Purchasers (i) as soon as available, a copy of each report and any definitive proxy statement of the Company filed with the Commission under the Exchange Act or mailed to shareholders, and (ii) from time to time, such other information concerning the Company as CSFBC may reasonably request.

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(e) During the period of two years after the Closing Date, the Issuers will, upon request, furnish to CSFBC, each of the other Purchasers and any holder of Offered Securities a copy of the restrictions on transfer applicable to the Offered Securities.

(f) During the period of two years after the Closing Date, the Issuers will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Offered Securities that have been reacquired by any of them.

(g) During the period of two years after the Closing Date, the Issuers will not be or become an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(h) The Company will pay all expenses incidental to the performance of the Issuers' obligations under this Agreement, the Indenture and the Registration Rights Agreement, including (i) the fees and expenses of the Trustee and its professional advisers, (ii) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities and, as applicable, the Exchange Securities (as defined in the Registration Rights Agreement), the preparation and printing of this Agreement, the Registration Rights Agreement, the Indenture, the Offering Document and amendments and supplements thereto, and any other document relating to the issuance, offer, sale and delivery of the Offered Securities and as applicable, the Exchange Securities, (iii) the cost of listing the Offered Securities and qualifying the Offered Securities for trading in The Portal/SM/ Market ("PORTAL") and any expenses incidental thereto, (iv) the cost of any advertising approved by the Company in connection with the issue of the Offered Securities (v) any expenses (including fees and disbursements of counsel) incurred in connection with qualification of the Offered Securities or the Exchange Securities for sale under the laws of such jurisdictions in the United States and Canada as CSFBC designates and the printing of memoranda relating thereto, (vi) for any fees charged by investment rating agencies for the rating of the Offered Securities or the Exchange Securities, and (vii) expenses incurred in distributing

Preliminary Offering Circulars and the Offering Document (including any amendments and supplements thereto) to the Purchasers. The Company will also pay (to the extent incurred by them) or reimburse the Purchasers for all travel expenses of the Company's officers and employees and any other expenses of the Issuers in connection with attending or hosting meetings with prospective purchasers of the Offered Securities from the Purchasers.

(i) In connection with the offering, until CSFBC shall have notified the Company and the other Purchasers of the completion of the resale of the Offered Securities, none of the Issuers and any of their affiliates has or will, either alone or with one or more other persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities; and neither it nor any of its affiliates will make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Offered Securities.

(j) For a period of 180 days after the Closing Date, none of the Issuers will offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any U.S. dollar-denominated debt securities issued or guaranteed by any of the Issuers and having a maturity of more than one year from the date of issue. None of the Issuers will at any time offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any securities under circumstances where such offer, sale, pledge, contract or disposition would cause the exemption afforded by Section 4(2) of the Securities Act or the safe harbor of Regulation S thereunder to cease to be applicable to the offer and sale of the Offered Securities.

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(k) The Company shall apply the net proceeds of the sale of the Offered Securities as set forth in the Offering Document.

(l) The Company will use best efforts to have the Offered Securities admitted for trading in PORTAL.

6. Conditions of the Obligations of the Purchasers. The obligations of the several Purchasers to purchase and pay for the Offered Securities on the Closing Date will be subject to the accuracy of the representations and warranties on the part of the Issuers herein, to the accuracy of the statements of officers of each of the Issuers made pursuant to the provisions hereof, to the performance by each of the Issuers of its obligations hereunder and to the following additional conditions precedent:

(a) The Purchasers shall have received a letter, dated the date of this Agreement, of each of PricewaterhouseCoopers LLP and Deloitte & Touche LLP in form and substance satisfactory to the Purchasers and substantially in the form of Exhibit A.

(b) Subsequent to the execution and delivery of this Agreement, there shall not have occurred (i) a change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the judgment of CSFBC, be likely to prejudice materially the success of the proposed issue, sale or distribution of the Offered Securities, whether in the primary market or in respect of dealings in the secondary market, or (ii) (A) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company or its subsidiaries which, in the judgment of a majority in interest of the Purchasers including CSFBC, is material and adverse and makes it impractical or inadvisable to proceed with completion of the offering or the sale of and payment for the Offered Securities; (B) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (C) any suspension or limitation of trading in securities generally on the New York Stock Exchange or any setting of minimum prices for trading on such exchange, or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (D) any banking moratorium declared by U.S. Federal or New York authorities; or (E) any outbreak or escalation of major hostilities in which the United States is involved, any declaration of war by Congress or any other substantial national or international calamity or emergency if, in the judgment of a majority in interest of the Purchasers including CSFBC, the effect of any such outbreak, escalation, declaration, calamity or emergency makes it impractical or inadvisable to proceed with completion of the offering or sale of and payment for the Offered Securities.

(c) The Purchasers shall have received an opinion, dated the Closing Date, of Quarles & Brady LLP, counsel for the Issuers, that:

(i) The Company has been duly incorporated and is validly existing as a corporation in active status under the laws of the State of Wisconsin;

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Document and to enter into and perform its obligations under this Agreement;

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(iii) Each Subsidiary and Guarantor is validly existing as a corporation in good standing (or equivalent status) under the laws of the jurisdiction of its incorporation, and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Document; except as otherwise disclosed in the Offering Document, all of the issued and outstanding capital stock of each Subsidiary and Guarantor has been duly authorized and validly issued, is fully paid and non-assessable (except as otherwise provided in Section 180.0622(2)(b) of the Wisconsin Business Corporation Law, as judicially interpreted) and, to the best of such counsel's knowledge, is owned by the Company, directly or through Subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity; none of the outstanding shares of capital stock of any Subsidiary and Guarantor was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary and Guarantor;

(iv) The Indenture shall have been duly authorized, executed and delivered by the Company and the Notes under the Indenture shall have been duly executed and delivered by the Company and assuming the due authorization, execution and delivery thereof by the Trustee constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law);

(v) Each of the Issuers is not and, after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Offering Document, will not be an "investment company" as defined in the Investment Company Act;

(vi) No consent, approval, authorization or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement and the Registration Rights Agreement in connection with the issuance or sale of the Offered Securities by the Company, except such as may be required under state securities laws and except for the order of the Commission declaring the Exchange Offer Registration Statement or the Shelf Registration Statement effective;

(vii) The execution, delivery and performance of this Agreement, the Indenture and the Offered Securities, as applicable, and the consummation of the transactions contemplated in this Agreement and in the Offering Document (including the issuance and sale of the Offered Securities and the use of the proceeds from the sale of the Offered Securities as described in the Offering Document under the caption "Use of Proceeds") and compliance by the Issuers with its obligations under this Agreement, the Indenture and the Offered Securities, as applicable, do not and will not, whether with or without the giving of notice or lapse of time or both, conflict with or constitute a breach of, or default or Repayment Event under or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Issuers or any Subsidiary pursuant to any written contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, known to such counsel, to which the Issuers or any Subsidiary is a party or by which it or any of them may be bound, or to which any of the property or assets of the Issuers or any Subsidiary is subject (except for such conflicts, breaches, Repayment Events or defaults or liens, charges or encumbrances that would not have a Material Adverse Effect), nor will such action result in any violation of the

provisions of the charter or by-laws of the Issuers or any Subsidiary, or any applicable law, statute, rule, regulation, judgment, order, writ or decree, known to such

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counsel, of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Issuers or any Subsidiary or any of their respective properties, assets or operations;

(viii) Such counsel have no reason to believe that the Offering Circular, or any amendment or supplement thereto, or any Exchange Act Report as of the date hereof and as of the Closing Date, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; the descriptions in the Offering Circular and the Exchange Act Reports of statutes, legal and governmental proceedings and contracts and other documents are accurate and fairly present the information required to be shown; it being understood that such counsel need express no opinion as to the financial statements or other financial data contained in the Offering Circular and the Exchange Act Reports;

(ix) This Agreement has been duly authorized, executed and delivered by the Company;

(x) The Registration Rights Agreement has been duly authorized, executed and delivered by the Issuers and constitutes a valid and binding agreement of the Issuers, enforceable against the Issuers in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law);

(xi) It is not necessary in connection with (i) the offer, sale and delivery of the Offered Securities by the Company to the several Purchasers pursuant to this Agreement or (ii) the resales of the Offered Securities by the several Purchasers in the manner contemplated by this Agreement to register the Offered Securities under the Securities Act or to qualify an indenture in respect thereof under the Trust Indenture Act;

(xii) The Notes are in the form contemplated by the Indenture, have been duly authorized by the Company and, assuming that the Notes have been duly authenticated by the Trustee in the manner described in its certificate delivered to the Purchasers on the Closing Date (which fact such counsel need not determine by an inspection of the Notes), the Notes have been duly executed, issued and delivered by the Company and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and are entitled to the benefits of the Indenture. The Notes have been duly authorized by the Company and, assuming that the Notes have been duly authenticated by the Trustee in the manner described in its certificate delivered to the Purchasers on the Closing Date (which fact such counsel need not determine by an inspection of the Notes), and upon due execution, issuance and delivery by the Company, the Notes will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether en-

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forcement is considered in a proceeding in equity or at law), and are entitled to the benefits of the Indenture. The Guarantees are in the form contemplated by the Indenture, have been duly authorized by the Guarantors and, assuming the Guarantees will be

duly executed, issued and delivered by the Guarantors, the Guarantees will constitute valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), and are entitled to the benefits of the Indenture;

(xiii) The Basic Documents conform as to legal matters in all material respects to the descriptions thereof contained in the Offering Circular;

(xiv) The documents incorporated by reference in the Offering Document (other than the financial statements, including any pro forma financial information, and supporting schedules included therein or omitted therefrom, as to which such counsel expresses no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder;

(xv) To the best of such counsel's knowledge, there are no statutes or regulations that are required to be described in the Offering Document that are not described as required;

(xvi) All descriptions in the Offering Circular of written contracts and other documents to which the Issuers or the Subsidiaries are a party are accurate in all material respects; to the best of such counsel's knowledge, there are no franchises, contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to in the Offering Document other than those described or referred to therein or filed or incorporated by reference as exhibits thereto, and the descriptions thereof or references thereto are correct in all material respects;

(xvii) To the best of such counsel's knowledge, none of the Issuers or any Subsidiary is in violation of its charter or by-laws and no default by the Issuers or any Subsidiary exists in the due performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument that is described in the Offering Document or incorporated by reference as an exhibit to the Offering Document; and

(xviii) To the best of such counsel's knowledge, except for the Registration Rights Agreement, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act;

(d) The Purchasers shall have received from Cahill Gordon & Reindel, counsel for the Purchasers, an opinion, dated the Closing Date, with respect to the validity of the Offered Securities, the Offering Circular, the exemption from registration for the offer and sale of the Offered Securities by the Company to the several Purchasers and the resales by the several Purchasers as contemplated hereby

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and other related matters as CSFBC may require, and the Company and each of the Issuers shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters with reference to same in the Offering Circular. In rendering such opinion, Cahill Gordon & Reindel may rely as to the incorporation of the Company and all other matters governed by Wisconsin law upon the opinion of Quarles & Brady LLP referred to above.

(e) The Purchasers shall have received certificates, dated the Closing Date, of the President or any Vice President and a principal financial or accounting officer of the Company in which such officers, to the best of their knowledge after reasonable investigation, shall state that the representations and warranties of the Company in this Agreement

are true and correct, that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date, and that, subsequent to the dates of the most recent financial statements in the Offering Document there has been no Material Adverse Effect except as set forth in or contemplated by the Offering Document or as described in such certificate, and that he or she has carefully examined the Offering Document and, in his or her opinion, as of the date thereof and as of the Closing Date, the statements contained in the Offering Document were true and correct in all material respects, and the Offering Document did not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, and since the date of the Offering Document, no event has occurred which should have been set forth in a supplement to or an amendment of the Offering Document which has not been so set forth in such supplement or amendment, and that the sale of the Offered Securities has not been enjoined (temporarily or permanently).

(f) The Purchasers shall have received letters, dated the Closing Date, which meet the requirements of subsection (a) of this Section, except that the specified date referred to in such subsection will be a date not more than three days prior to the Closing Date for the purposes of this subsection.

(g) The Company shall have furnished to the Purchasers such further certificates and documents confirming the representations and warranties, covenants and conditions contained herein and related matters (including with respect to subsection (i) below) as the Purchasers may reasonably have requested.

(h) The Offered Securities shall have been designated for trading on PORTAL.

(i) Each of the Company and the Trustee shall have executed and delivered the Indenture in form and substance satisfactory to the Purchasers and the Indenture shall be in full force and effect.

(j) The Company shall have executed and delivered the Registration Rights Agreement in form and substance satisfactory to the Purchasers and the Registration Rights Agreement shall be in full force and effect.

(k) The Spin-off shall be effective substantially as described in the Offering Document and there shall be no conditions to closing under any of the financing documents related to the Spin-off (including the Tender Offer and the Actuant Credit Facility (as such terms are defined in the Offering Circular)), substantially as described in the Offering Document, that have not been satisfied or waived to the satisfaction of the Purchasers.

(l) The Company shall apply the net proceeds of the sale of the Offered Securities as set forth in the Offering Document.

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The Company will furnish the Purchasers with such conformed copies of such opinions, certificates, letters and documents as the Purchasers reasonably request. CSFBC may in its sole discretion waive on behalf of the Purchasers compliance with any conditions to the obligations of the Purchasers hereunder.

7. Indemnification and Contribution. (a) The Issuers will, jointly and severally, indemnify and hold harmless each Purchaser, its partners, directors and officers and each person, if any, who controls such Purchaser within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which the Purchaser may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any amendment or supplement thereto, or any related preliminary offering circular or the Exchange Act Reports or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, including any losses, claims, damages or liabilities arising out of or based upon the failure of any of the Issuers to perform its obligations under Section 5(a) of this Agreement, and will reimburse each Purchaser for any legal or other expenses reasonably incurred by such Purchaser in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the Issuers will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with written information furnished to the Company by any Purchaser through CSFBC specifically for use therein, it being understood and agreed that the only such information consists of the information described as such in subsection (b) below; and provided, further, that with

respect to any untrue statement or alleged untrue statement in or omission or alleged omission from any preliminary offering circular the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Purchaser that sold the Offered Securities concerned to the person asserting any such losses, claims, damages or liabilities, to the extent that such sale was an initial resale by such Purchaser and any such loss, claim, damage or liability of such Purchaser results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Offered Securities to such person, a copy of the Offering Document (exclusive of any material included therein but not attached thereto) if the Company had previously furnished copies thereof to such Purchaser.

(b) Each Purchaser will severally and not jointly indemnify and hold harmless each of the Issuers, its directors and officers and each person, if any, who controls the Issuers within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities to which each of the Issuers may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Offering Document, or any amendment or supplement thereto, or any related preliminary offering circular, or arise out of or are based upon the omission or the alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Purchaser through CSFBC specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by the Issuers in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred, it being understood and agreed that the only such information furnished by any Purchaser consists of the following information in the Offering Document furnished on behalf of each Purchaser: under the caption "Plan of Distribution" paragraphs three, eight and nine; provided, however, that the Purchasers shall not be liable for any losses, claims, damages or liabilities arising out of or based upon the Issuers' failure to perform their obligations under Section 5(a) of this Agreement.

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(c) Promptly after receipt by an indemnified party under this Section 7(c) of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 7(c) for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 7(d) is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuers on the one hand and the Purchasers on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuers on the one hand and the Purchasers on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by each of the Issuers on the one hand and the Purchasers on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by each of the Issuers bear to the total discounts and commissions received by the Purchasers from each of the Issuers under this

Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by each of the Issuers or the Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities purchased by it were resold exceeds the amount of any damages such the Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. The Purchasers' obligations in this subsection (d) to contribute are several in proportion to their respective purchase obligations and not joint.

(e) The obligations of each of the Issuers under this Section shall be in addition to any liability which each of the Issuers may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Purchaser within the meaning of the Securities Act or the Exchange Act; and the obligations of the Purchasers under this Section shall be in addition to any liability which the respective Purchasers may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls each of the Issuers within the meaning of the Securities Act or the Exchange Act.

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8. Default of Purchasers. If any Purchaser or Purchasers default in their obligations to purchase Offered Securities hereunder and the aggregate principal amount of Offered Securities that such defaulting Purchaser or Purchasers agreed but failed to purchase does not exceed 10% of the total principal amount of Offered Securities, CSFBC may make arrangements satisfactory to the Issuers for the purchase of such Offered Securities by other persons, including any of the Purchasers, but if no such arrangements are made by the Closing Date, the non-defaulting Purchasers shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Offered Securities that such defaulting Purchasers agreed but failed to purchase. If any Purchaser or Purchasers so default and the aggregate principal amount of Offered Securities with respect to which such default or defaults occur exceeds 10% of the total principal amount of Offered Securities and arrangements satisfactory to CSFBC and the Issuers for the purchase of such Offered Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of any non-defaulting Purchaser and the Issuers, except as provided in Section 9. As used in this Agreement, the term "Purchaser" includes any person substituted for a Purchaser under this Section. Nothing herein will relieve a defaulting Purchaser from liability for its default.

9. Survival of Certain Representations and Obligations. The respective indemnities, agreements, representations, warranties and other statements of the Company or any of their officers and of the several Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Purchaser and the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Offered Securities. If for any reason the purchase of the Offered Securities by the Purchasers is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Issuers and the Purchasers pursuant to Section 7 shall remain in effect. If the purchase of the Offered Securities by the Purchasers is not consummated for any reason other than solely because of the occurrence of any event specified in clause (C), (D) or (E) of Section 6(b)(ii), the Company will reimburse the Purchasers for all out-of-pocket expenses (including fees and disbursements of counsel) reasonably incurred by them in connection with the offering of the Offered Securities.

10. Notices. All communications hereunder will be in writing and, if sent to the Purchasers will be mailed, delivered or telegraphed and confirmed to the Purchasers, c/o Credit Suisse First Boston Corporation, Eleven Madison Avenue, New York, NY 10010-3629, Attention: Investment Banking Department - Transactions Advisory Group, or, if sent to the Issuers, will be mailed, delivered or telegraphed and confirmed to it c/o Applied Power Inc., 6100 North Baker Road, Glendale, WI 53209, Attention: Andrew G. Lampereur; provided, however, that any notice to a Purchaser pursuant to Section 7 will be mailed, delivered or telegraphed and confirmed to such Purchaser.

11. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder, except that holders of Offered Securities shall be entitled to enforce the agreements for their benefit contained in the second

and third sentences of Section 5(b) hereof against the Issuers as if such holders were parties thereto.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

13. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of laws.

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The Issuers hereby submit to the non-exclusive jurisdiction of the Federal and state courts in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

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If the foregoing is in accordance with the Purchasers' understanding of our agreement, kindly sign and return to us one of the counterparts hereof, whereupon it will become a binding agreement between the Company and the several Purchasers in accordance with its terms.

Very truly yours,

Applied Power Inc.

By: /s/

Name:
Title:

APW TOOLS & SUPPLIES, INC.

By: /s/

Name:
Title:

VERSA TECHNOLOGIES, INC.

By: /s/

Name:
Title:

Applied Power Investments II, Inc.

By: /s/

Name:
Title:

Columbus Manufacturing LLC

By: Applied Power Inc.

By: /s/

Name:
Title:

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The foregoing Purchase Agreement is hereby confirmed and accepted as of the date first above written.

Credit Suisse First Boston Corporation
Goldman, Sachs & Co.

Acting on behalf of themselves
and as the Representatives of
the several Purchasers

By Credit Suisse First Boston Corporation

By: /s/ Colleen A. Burke

Name: Colleen A. Burke
Title: Director

AMENDMENT TO
PURCHASE AND SALE AGREEMENT

THIS AMENDMENT TO PURCHASE AND SALE AGREEMENT, dated as of July 14, 2000 (this "Amendment"), is entered into among the Originators (each an "Originator" and together the "Originators") party hereto, Applied Power Inc. ("API") and Applied Power Credit Corporation (the "Initial Purchaser").

RECITALS

1. The Originators, API and the Initial Purchaser are parties to the Amended and Restated Purchase and Sale Agreement, dated as of November 20, 1997 (as amended, supplemented or otherwise modified, the "Agreement").

2. Each of AA Manufacturing, Inc., APW Ltd. f/k/a Wright Line Inc., Ancor Products, Inc., Applied Power Inc., Calterm, Inc., Del City Wire Co., Inc., GB Electrical, Inc., Moxness Products, Inc., New England Controls, Inc., Nielsen Hardware Corporation, and Versa Technologies, Inc. (each, an "Exiting Originator") desires to cease to be an "Originator" party to the Agreement and to repurchase the Receivables originated thereby; and

3. The parties hereto desire to amend the Agreement as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Certain Defined Terms. Capitalized terms that are used herein without definition and that are defined in the Agreement or in Schedule I to the Receivables Purchase Agreement, dated as of November 20, 1997 (as amended, supplemented or otherwise modified, the "Receivables Purchase Agreement"), among API, the Initial Purchaser, Barton Capital Corporation (the "Purchaser") and Societe Generale (the "Agent") shall have the same meanings herein as therein defined.

2. Amendments to the Agreement. The Agreement is hereby amended as follows:

2.1 Each Exiting Originator is hereby removed as an "Originator" under the Agreement. All reference to "Originators" in the Agreement and the other Agreement Documents shall be deemed to exclude the Exiting Originators and the Exiting Originators shall have no further obligations under the Agreement; provided, however, that each Exiting Originator shall remain bound by those terms of the Agreement that survive termination of the Agreement (including, without limitation, the provisions described in Section 5.9 of the Agreement).

2.2 Schedule III to the Agreement is hereby amended and restated in its entirety to be, and to read, as set forth in Schedule III hereto.

3. Reconveyance of Receivables Originated by the Exiting Originators.

(a) In consideration of the purchase price agreed to between the Initial Purchaser and each Exiting Originator (the "Reconveyance Price") in immediately available funds, the receipt and sufficiency of which is hereby acknowledged, the Initial Purchaser hereby sells, transfers, assigns, grants and otherwise conveys to such Exiting Originator all of the Initial Purchaser's right, title and interest in and to all Receivables originated by such Exiting Originator and all Related Rights with respect thereto (the "Reconveyed Assets"). The Initial Purchaser shall pay to each Exiting Originator the principal and interest outstanding on the date hereof under the Initial Purchaser Note made to such Exiting Originator, which Initial Purchaser Note shall be returned to the Initial Purchaser and marked "cancelled". The amount payable under such Initial Purchaser Note and the Reconveyance Price may be netted.

(b) The Initial Purchaser hereby releases its right, title and interest in, to and under the Reconveyed Assets, and the Agent and the Purchaser hereby consent to such release. Such release is made without representation, warranty or recourse, except that the Initial Purchaser hereby represents and warrants that no liens have been created by it with respect to such Reconveyed Property.

(c) The parties hereto hereby agree that upon the reconveyance described in this Section 3, the Receivables originated by the Exiting Originators shall cease to be in the "Receivables Pool" for all purposes under the Agreement Documents.

4. Representations and Warranties. (a) The Initial Purchaser and the Originators (other than, with respect to clause (i), the Exiting Originators) each hereby represents and warrants that:

(i) The representations and warranties thereof contained in the Agreement Documents are true and correct in all material respects on and as

of the date hereof.

(ii) No event has occurred and would be continuing after giving effect to the amendments described in Section 2 or the reconveyance and release described in Section 3, or would result therefrom, that constitutes a Termination Event or Unmatured Termination Event.

(iii) After giving effect to the reconveyance and release described in Section 3, the Aggregate Participation Amounts will not exceed the Participation Amounts Limit.

(iv) It has the power and authority to execute, deliver and perform this Amendment, and this Amendment constitutes a legal, valid and binding obligation thereof.

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5. Effect of Amendment. Except as expressly amended and modified by this Amendment, all provisions of the Agreement shall remain in full force and effect. After this Amendment becomes effective, all references in the Agreement (or in any other Agreement Document) to "this Agreement", "hereof", "herein" or words of similar effect referring to the Agreement shall be deemed to be references to the Agreement as amended, including by this Amendment. This Amendment shall not be deemed, expressly or impliedly, to waive, amend or supplement any provision of the Agreement other than as set forth herein.

6. Effectiveness. This Amendment shall become effective upon the execution of such Amendment by all of the parties hereto.

7. Consent to Assignment by Servicer. Each of the parties hereto, the Agent and the Purchaser, by its signing hereof, hereby consents to API's assignment to APW North America, Inc. ("APW") of all of API's rights, interests and obligations under the Related Documents, all as set forth in the Assignment and Assumption Agreement, dated as of July 31, 2000, between API and APW.

8. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument.

9. Governing Law. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of New York (without regard to any otherwise applicable principles of conflicts of law), except to the extent that the perfection (and the effect of perfection or nonperfection) of the Initial Purchaser's interests in the Receivables is governed by the laws of a jurisdiction other than the State of New York.

10. Section Headings. The various headings of this Amendment are included for convenience only and shall not affect the meaning or interpretation of this Amendment, the Agreement or any provision hereof or thereof.

(Continued on following page)

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

Applied Power Credit Corporation,
as the Initial Purchaser

By: _____
Name:
Title:

Ancor Products, Inc.

By: _____
Name:
Title:

Applied Power Inc.

By: _____
Name:

Title:

APW Enclosure Systems, LP
successor to AA Manufacturing, Inc.

By: _____

Name:
Title:

APW Ltd.
f/k/a Wright Line Inc.

By: _____

Name:

4

Title:

APW North America, Inc.
f/k/a ZERO Corporation

By: _____

Name:
Title:

APW Tools & Supplies, Inc.
f/k/a GB Electrical, Inc.
successor to Calterm, Inc.

By: _____

Name:
Title:

Cambridge Aeroflo, Inc.

By: _____

Name:
Title:

Del City Wire Co., Inc.

By: _____

Name:
Title:

Eder Industries, Inc.

By: _____

Name:
Title:

5

Electronic Solutions

By: _____

Name:
Title:

McLean Midwest Corporation

By: _____

Name:
Title:

McLean West Inc.
f/k/a Air Cooling Technology, Inc.

By: _____

Name:
Title:

Mox-Med, Inc.
f/k/a Moxness Products, Inc.

By: _____

Name:
Title:

New England Controls, Inc.

By: _____

Name:
Title:

6

Nielsen Hardware Corporation

By: _____

Name:
Title:

Precision Fabrication Technologies, Inc.

By: _____

Name:
Title:

Versa Technologies, Inc.

By: _____

Name:
Title:

Zero-East Division, Zero Corporation

By: _____

Name:
Title:

Zero Enclosures, Inc.

By: _____

Name:
Title:

7

ACKNOWLEDGED AND CONSENTED TO

by:

Societe Generale,
as Agent

By: _____

Name:
Title:

By: _____

Name:
Title:

Barton Capital Corporation,
as Purchaser

By: _____

Name:
Title:

8

SCHEDULE III

ORIGINATORS

APW North America, Inc. f/k/a Zero Corporation
Cambridge Aeroflo, Inc.
Eder Industries, Inc.
Electronic Solutions
McLean Midwest Corporation
McLean West Inc. f/k/a Air Cooling Technology, Inc.
Precision Fabrication Technologies, Inc.
Zero-East Division, Zero Corporation
Zero Enclosures, Inc.

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ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated as of July 14, 2000, is between Applied Power Inc. ("API") and APW North America, Inc. ("APW").

BACKGROUND

1. API, as Guarantor and Servicer, is a party to the Amended and Restated Purchase and Sale Agreement, dated as of November 20, 1997 (as heretofore amended, supplemented and otherwise modified, the "Purchase and Sale Agreement"), among certain Originators party thereto, API and Applied Power Credit Corporation ("APCC"); API, individually and as Servicer, is also a party to the Receivables Purchase Agreement, dated as of November 20, 1997 (as heretofore amended, supplemented and otherwise modified, the "Receivables Purchase Agreement"), among APCC, API, Barton Capital Corporation and Societe Generale (the "Agent").

2. API desires to assign to APW, and APW desires to accept and assume from API, all of API's rights, interests and obligations under the Purchase and Sale Agreement, the Receivables Purchase Agreement, the other Agreement Documents and any and all documents and instruments related thereto (with such documents and instruments, the Purchase and Sale Agreement, the Receivables Purchase Agreement and the other Agreement Documents herein collectively referred to as the "Related Documents").

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. SECTION Definitions. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned such terms in the Receivables Purchase Agreement.

2. SECTION Assignment and Assumption. Effective immediately after the effectiveness of the Amendment to Purchase and Sale Agreement, dated as of July 14, 2000, among the Originators party thereto, API and APCC (the "Effective Date"), API hereby transfers, sets over, assigns and conveys to APW all of API's right, title and interest in, to and under the Related Documents. From and after the Effective Date, APW hereby accepts such assignment, agrees to be bound by all of the terms and conditions of the Related Documents and assumes unconditionally all of API's obligations under the Related Documents, including, without limitation, API's obligations under Section 6.1 of the Purchase and Sale Agreement; provided, however, that APW shall not assume nor be responsible for (i) any liability of API with respect to any representations, warranties or covenants of API set forth in any of the Related Documents or (ii) any breach or default by API under any of the Related Documents. From and after the Effective Date, API shall be released from all obligations under the Related Documents, and any reference in the Related Documents to "Servicer" or "API" shall refer to APW; provided, however, that API shall not be released from any liability (i) under the Related Documents with respect to the representations, warranties and covenants of API thereunder, or (ii) for any breach

or default by it under the Related Documents.

3. SECTION Representations and Warranties of APW. APW hereby represents, warrants and covenants, as of the Effective Date, the representations, warranties and covenants of API set forth in the Related Documents; provided, however, that the reference in clause (a) of Section 6.02 of the Receivables Purchase Agreement to "a corporation in good standing under the laws of the State of Wisconsin" shall be revised to be "a corporation in good standing under the laws of the State of [Delaware]"; and that the reference in clause (i) of Section 6.02 of the Receivables Purchase Agreement to "August 31, 1997" shall be revised to be "[LOGO]."

4. SECTION Further Assurances. API hereby agrees that it shall execute, deliver and file all such documents, agreements and instruments as APW may reasonably request in order to evidence the assignment hereunder or more effectively carry out the intent of this Agreement.

5. SECTION Consent of the Agent. By its execution of the acknowledgment and acceptance hereto, the Agent hereby consents to API's assignment to APW and APW's acceptance and assumption of all of API's rights, interests and obligations under the Related Documents.

6. SECTION Miscellaneous.

A. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES APPLIED IN ILLINOIS.

B. This Agreement may not be amended, supplemented or waived except pursuant

to a writing signed by each of the parties hereto.

C. This Agreement may be executed in counterparts, and by the different parties on different counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.

D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

E. The headings contained in this Agreement are for convenience of reference only and shall not be used in the interpretation hereof.

[Remainder of page intentionally left blank]

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

Applied Power Inc.

By: _____

Name:

Title:

APW North America, Inc.

By: _____

Name:

Title:

ACKNOWLEDGED AND ACCEPTED:

Societe Generale,
as Agent

By: _____

Name:

Title:

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