

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended May 31, 2002

OR

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

Commission File No. 1-11288

ACTUANT CORPORATION

(Exact name of registrant as specified in its charter)

Wisconsin 39-0168610  
(State of incorporation) (I.R.S. Employer Id. No.)

6100 NORTH BAKER ROAD  
MILWAUKEE, WISCONSIN 53209  
Mailing address: P. O. Box 3241, Milwaukee, Wisconsin 53201  
(Address of principal executive offices)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

The number of shares outstanding of the registrant's Class A Common Stock as of June 30, 2002 was 11,589,017.

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\*No response to this item is included herein for the reason that it is inapplicable or the answer to such item is negative.

Risk Factors That May Affect Future Results

This quarterly report on Form 10-Q contains certain statements that constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainties. The terms "may," "should," "could," "anticipate," "believe," "estimate," "expect," "objective," "plan," "project" and similar expressions are intended to identify forward-looking statements. Such forward-looking statements, including statements under the caption Outlook, are subject to inherent risks and uncertainties that may cause actual results or events to differ materially from those contemplated by such forward-looking statements. In addition to the assumptions and other factors referred to specifically in connection with such statements, factors that may cause actual results or events to differ materially from those contemplated by such forward-looking statements include, without limitation, general economic conditions and market conditions in the recreational vehicle, truck, automotive, industrial production, and construction industries in North America, Europe and, to a lesser extent, Asia, market acceptance of existing and new products, successful integration of acquisitions, operating margin risk due to competitive pricing and operating efficiencies, supply chain risk, material or labor cost increases, foreign currency risk, interest rate risk, the economy's reaction to terrorist actions, the length of economic downturns in the Company's markets, uncertainties resulting from APW Ltd.'s bankruptcy proceedings, the Company's ability to access capital markets, the Company's debt level, and other factors that may be referred to or noted in the Company's reports filed with the Securities and Exchange Commission from time to time.

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PART I - FINANCIAL INFORMATION

Item 1 - Financial Statements

ACTUANT CORPORATION  
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS  
(In thousands, except per share amounts)  
(Unaudited)

<TABLE>  
<CAPTION>

	Three Months Ended May 31,		Nine Months Ended May 31,	
-----	2002	2001	2002	-----
2001				
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Net Sales .....	\$ 120,009	\$ 126,108	\$ 341,583	\$
361,425				
Cost of Products Sold .....	78,417	82,902	225,268	
235,413				-----
-----				-----
Gross Profit .....	41,592	43,206	116,315	
126,012				
Selling, Administrative, and Engineering Expenses .....	21,308	23,405	62,294	
66,673				
Amortization of Intangible Assets .....	616	1,725	1,848	
4,593				
Restructuring Charge .....	--	1,740	--	
1,740				-----
-----				-----
Operating Earnings .....	19,668	16,336	52,173	
53,006				
Net Financing Costs .....	6,914	12,711	26,611	
38,211				
Other Expense (Income) .....	(57)	1,177	(798)	
(120)				-----
-----				-----
Earnings from Continuing Operations before Income Tax Expense.....	12,811	2,448	26,360	
14,915				
Income Tax Expense .....	4,548	990	9,498	
6,074				-----
-----				-----

8,841	Earnings from Continuing Operations .....	8,263	1,458	16,862	
	Discontinued Operations, net of Income Taxes .....	(10,000)	(781)	(10,000)	
	(781)				
	Extraordinary Items, net of Income Taxes .....	(9,294)	--	(9,294)	
	--				
	Cumulative Effect of Change in Accounting Principle, net of Income Taxes .....	--	--	(7,200)	
	--				
	-----	-----	-----	-----	-----
8,060	Net Earnings (Loss) .....	\$ (11,031)	\$ 677	\$ (9,632)	\$
	-----	-----	-----	-----	-----
	=====	=====	=====	=====	=====
	Basic Earnings (Loss) Per Share:				
	Earnings from Continuing Operations .....	\$ 0.71	\$ 0.18	\$ 1.78	\$
1.11					
	Discontinued Operations, net of Income Taxes .....	(0.86)	(0.10)	(1.06)	
(0.10)					
	Extraordinary Items, net of Income Taxes .....	(0.80)	--	(0.98)	
--					
	Cumulative Effect of Change in Accounting Principle, net of Income Taxes .....	--	--	(0.76)	
--					
	-----	-----	-----	-----	-----
1.02	Total .....	\$ (0.95)	\$ 0.09	\$ (1.02)	\$
	-----	-----	-----	-----	-----
	=====	=====	=====	=====	=====
	Diluted Earnings (Loss) Per Share:				
	Earnings from Continuing Operations .....	\$ 0.68	\$ 0.18	\$ 1.69	\$
1.07					
	Discontinued Operations, net of Income Taxes .....	(0.82)	(0.09)	(1.00)	
(0.09)					
	Extraordinary Items, net of Income Taxes .....	(0.76)	--	(0.93)	
--					
	Cumulative Effect of Change in Accounting Principle, net of Income Taxes .....	--	--	(0.72)	
--					
	-----	-----	-----	-----	-----
0.97	Total .....	\$ (0.90)	\$ 0.08	\$ (0.96)	\$
	-----	-----	-----	-----	-----
	=====	=====	=====	=====	=====
	Weighted Average Common Shares Outstanding:				
	Basic .....	11,587	7,948	9,454	
7,937					
	Diluted .....	12,236	8,235	9,995	
8,297					

See accompanying Notes to Condensed Consolidated Financial Statements

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ACTUANT CORPORATION  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands, except share amounts)

	May 31, 2002	August 31, 2001
	-----	-----
	(Unaudited)	
ASSETS		
-----		
Current Assets:		
Cash and cash equivalents .....	\$ 27,599	\$ 26,554
Accounts receivable, net .....	54,683	54,971
Inventories, net .....	55,928	56,738
Deferred income taxes .....	9,371	5,833
Other current assets .....	4,132	5,074
	-----	-----
Total Current Assets .....	151,713	149,170
Property, Plant and Equipment, net .....	38,043	39,482
Goodwill .....	101,368	108,124

Other Intangible Assets, net .....	19,090	20,916
Other Long-term Assets .....	10,097	25,024
	-----	-----
Total Assets .....	\$ 320,311	\$ 342,716
	=====	=====

LIABILITIES AND SHAREHOLDERS' EQUITY

Current Liabilities:		
Short-term borrowings.....	\$ 1,178	\$ 1,568
Current maturities of long-term debt.....	8,794	--
Trade accounts payable.....	40,038	39,798
Accrued compensation and benefits.....	9,704	10,655
Income taxes payable.....	43,361	50,034
Accrued interest.....	1,917	10,602
Other current liabilities.....	12,110	21,532
	-----	-----
Total Current Liabilities.....	117,102	134,189
Long-term Debt, less current maturities.....	229,833	325,752
Deferred Income Taxes.....	4,086	3,907
Other Long-term Liabilities.....	18,649	18,622
Shareholders' Equity:		
Class A common stock, \$0.20 par value, authorized 16,000,000 shares, Issued and outstanding 11,589,017 and 8,013,306 shares, respectively .....		
	2,318	1,603
Additional paid-in capital.....	(524,429)	(623,867)
Accumulated other comprehensive loss.....	(19,353)	(19,227)
Retained earnings.....	492,105	501,737
	-----	-----
Total Shareholders' Deficit....	(49,359)	(139,754)
	-----	-----
Total Liabilities and Shareholders' Equity.....	\$ 320,311	\$ 342,716
	=====	=====

See accompanying Notes to Condensed Consolidated Financial Statements

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ACTUANT CORPORATION  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)  
(Unaudited)

<TABLE>  
<CAPTION>

	Nine Months Ended May 31,	
	2002	2001
	-----	-----
<S>	<C>	<C>
Operating Activities		
Earnings from continuing operations .....	\$ 16,862	\$ 8,841
Adjustments to reconcile net earnings to net cash Provided by operating activities:		
Depreciation .....	7,243	7,776
Amortization of intangible assets .....	1,848	4,593
Amortization of debt discount and debt issuance costs ...	1,943	1,658
Cash payments on the Mox-Med divestiture .....	(6,961)	--
Other non-cash items .....	(104)	(1,084)
Changes in operating assets and liabilities:		
Accounts receivable .....	987	28,354
Inventories .....	974	8,814
Other assets .....	(975)	28,139
Trade accounts payable .....	(223)	(9,287)
Income taxes payable .....	1,182	(25,520)
Accrued interest .....	(8,687)	1,526
Other accrued liabilities .....	(11,010)	(7,540)
	-----	-----
Net cash provided by continuing operations .....	3,079	46,270
Cash used in discontinued operations .....	--	(1,311)
	-----	-----
Total cash provided by operating activities .....	3,079	44,959
Investing Activities		
Proceeds from sale of property, plant and equipment .....	1,679	1,907
Proceeds from property insurance settlement .....	2,858	1,118
Additions to property, plant and equipment .....	(7,500)	(5,277)
Business acquisitions .....	(785)	(11,250)

Business dispositions and other .....	--	1,192
	-----	-----
Net cash used in investing activities .....	(3,748)	(12,310)
Financing Activities		
Partial redemption of 13% senior subordinated notes .....	(70,000)	--
Cash payment for redemption premium included in extraordinary charge	(9,100)	--
Issuance of long-term debt .....	85,000	12,652
Net principal payments on debt .....	(103,938)	(54,909)
Net proceeds from issuance of common stock .....	99,705	--
Debt issuance costs .....	(1,206)	(147)
Proceeds from stock option exercises .....	1,190	437
	-----	-----
Net cash provided by (used in) financing activities .....	1,651	(41,967)
Effect of exchange rate changes on cash .....	63	54
	-----	-----
Net increase (decrease) in cash and cash equivalents .....	1,045	(9,264)
Cash and cash equivalents - beginning of period .....	26,554	9,896
	-----	-----
Cash and cash equivalents - end of period .....	\$ 27,599	\$ 632
	=====	=====

</TABLE>

See accompanying Notes to Condensed Consolidated Financial Statements

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ACTUANT CORPORATION  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(In thousands, except share and per share amounts)

Note 1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of Actuant Corporation ("Actuant" or the "Company") have been prepared in accordance with generally accepted accounting principles for interim financial reporting and with the instructions of Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The condensed consolidated balance sheet data as of August 31, 2001 was derived from audited financial statements, but does not include all disclosures required by generally accepted accounting principles. The Company's significant accounting policies are disclosed in its fiscal 2001 Annual Report on Form 10-K. For additional information, refer to the consolidated financial statements and related footnotes in the Company's fiscal 2001 Annual Report on Form 10-K.

In the opinion of management, all adjustments considered necessary for a fair presentation of financial results have been made. Except as discussed otherwise, such adjustments consist of only those of a normal recurring nature. Operating results for the nine months ended May 31, 2002 are not necessarily indicative of the results that may be expected for the entire fiscal year ending August 31, 2002.

Prior year's financial statements have been reclassified where appropriate to conform to current year presentations.

Note 2. Acquisitions and Divestitures

In March 2001, the Company, through a wholly owned subsidiary, acquired certain assets and assumed certain liabilities of Dewald Manufacturing, Inc. ("Dewald"). Dewald is engaged in the design and manufacture of recreational vehicle ("RV") slide out and leveling systems for the North American RV market. The results of operations of Dewald are included in the accompanying financial statements since the date of the acquisition and are included in the Engineered Solutions segment in Note 16 - Segment Information. The acquisition was accounted for as a purchase, and the purchase price of \$12.0 million (including deferred purchase price of \$1.0 million) was allocated to the fair value of the assets acquired and the liabilities assumed. The excess purchase price over the fair value of the assets acquired, which approximated \$8.8 million, was recorded as goodwill. This acquisition was funded by borrowings under Actuant's Senior Secured Credit Facility (the "Senior Secured Credit Facility"). In March 2002, the Company paid the deferred purchase price to the former owners of Dewald.

In May 2001, the Company sold the Enerpac Quick Mold Change ("QMC") product line in the Tools & Supplies segment to the QMC business management team for approximately \$1.0 million. QMC had annual sales of approximately \$6.0 million. The sale resulted in a loss of approximately \$0.7 million, \$0.4 million after-tax, or \$0.05 per diluted share.

In August 2001, the Company completed the sale of Mox-Med, Inc. ("Mox-Med"), a business unit in the Engineered Solutions segment. Mox-Med had annual sales of approximately \$18.0 million at the time of the sale. Cash proceeds from the sale were approximately \$40.5 million, which resulted in a net gain of \$18.5 million, \$11.1 million after-tax, or \$1.34 per diluted share. The Company paid approximately \$7.0 million in income taxes and transaction fees related to the sale of Mox-Med during the nine months ended May 31, 2002.

Note 3. Accounts Receivable Financing

During the quarter ended May 31, 2001, the Company established an accounts receivable securitization program pursuant to which it sells certain of its trade accounts receivable to a wholly owned special purpose subsidiary which, in turn, sells participating interests in its pool of receivables to a financial institution. Cash proceeds from the initial sale totaled \$30.0 million and were used to reduce indebtedness under the Company's Senior Secured Credit Facility. Sales of the participating interests in the trade receivables are reflected as a reduction of accounts receivable in the accompanying Condensed Consolidated Balance Sheets and the proceeds received are included in cash flows from operating activities in the accompanying Condensed Consolidated Statements of Cash Flows. Trade receivables sold and being serviced by the Company were \$25.8 million and \$25.3 million at May 31, 2002 and August 31, 2001, respectively.

Accounts receivable financing costs of \$0.2 million and \$0.8 million for the three and nine months ended May 31, 2002, respectively, are included in "Net Financing Costs" in the accompanying Condensed Consolidated Statements of Earnings. In connection with the initial sale of the receivables in May 2001, the Company recorded financing costs of

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\$0.6 million, which are included in "Net Financing Costs" for the three and nine months ended May 31, 2001. There were no receivables sold during the first and second quarters of fiscal 2001, and as such there were no accounts receivable financing costs for those quarters. Total cash proceeds under the trade accounts receivable financing program were \$37.9 million and \$102.2 million for the three months and nine months ended May 31, 2002, respectively.

Note 4. Inventories, Net

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. 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.

Note 5. Goodwill and Other Intangible Assets

The Company adopted Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets," in the first quarter of fiscal 2002. Application of the non-amortization provisions of SFAS No. 142 is expected to result in an increase in net income of approximately \$3.2 million in fiscal 2002. Under the transitional provisions of SFAS No. 142, the Company recorded a goodwill impairment loss associated with its Milwaukee Cylinder reporting unit of \$7.2 million in the first quarter. The impairment loss has been recorded as a cumulative effect of change in accounting principle on the accompanying Condensed Consolidated Statements of Earnings for the nine months ended May 31, 2002.

The following sets forth a reconciliation of net income and earnings per share information for the three months and nine months ended May 31, 2002 and 2001 adjusted for the non-amortization provisions of SFAS No. 142.

<TABLE>  
<CAPTION>

	For the Three Months Ended May 31,		For the Nine Months Ended May 31,	
	2002	2001	2002	2001
-				
<S>	<C>	<C>	<C>	<C>
Net earnings (loss):				

Reported net earnings from continuing operations .....	\$ 8,263	\$ 1,458	\$ 16,862	\$ 8,841
Reported net earnings (loss).....	(11,031)	677	(9,632)	8,060
Add: Goodwill amortization, net of tax effect .....	--	688	--	1,593
Adjusted net earnings from continuing operations.....	8,263	2,146	16,862	10,434
Adjusted net earnings (loss) .....	\$ (11,031)	\$ 1,365	\$ (9,632)	\$ 9,653

Basic earnings per share:

Adjusted net earnings from continuing operations.....	\$ 0.71	\$ 0.27	\$ 1.78	\$ 1.31
Adjusted net earnings (loss) .....	\$ (0.95)	\$ 0.17	\$ (1.02)	\$ 1.22

Diluted earnings per share:

Adjusted net earnings from continuing operations .....	\$ 0.68	\$ 0.26	\$ 1.69	\$ 1.26
Adjusted net earnings (loss) .....	\$ (0.90)	\$ 0.17	\$ (0.96)	\$ 1.16

</TABLE>

The changes in the carrying amount of goodwill for the year ended August 31, 2001 and for the nine months ended May 31, 2002 are as follows:

<TABLE>

<CAPTION>

	Tools & Supplies Segment	Engineered Solutions Segment	Total
	-----	-----	-----
<S>	<C>	<C>	<C>
Balance as of August 31, 2000.....	\$ 44,451	\$ 71,897	\$ 116,348
Goodwill of acquired businesses.....	--	8,291	8,291
Amortization.....	(1,569)	(2,404)	(3,973)
Goodwill written off related to sale of business unit	--	(12,613)	(12,613)
Currency impact.....	--	71	71
	-----	-----	-----
Balance as of August 31, 2001.....	42,882	65,242	108,124
Transitional impairment charge.....	--	(7,200)	(7,200)
Purchase price allocation adjustment.....	--	491	491
Currency impact.....	--	(47)	(47)
	-----	-----	-----
Balance as of May 31, 2002.....	\$ 42,882	\$ 58,486	\$ 101,368
	=====	=====	=====

</TABLE>

The gross carrying amount and accumulated amortization of the Company's intangible assets other than goodwill as of May 31, 2002 and August 31, 2001 are as follows:

<TABLE>

<CAPTION>

	May 31, 2002			August 31, 2001		
	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value
	-----	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Patents.....	\$ 21,703	\$ 7,713	\$ 13,990	\$ 22,652	\$ 7,653	\$ 14,999
Trademarks.....	4,516	1,036	3,480	4,496	842	3,654
Non-compete agreements....	3,286	2,386	900	10,509	9,038	1,471
Other.....	1,332	612	720	2,086	1,294	792
	-----	-----	-----	-----	-----	-----
Total.....	\$ 30,837	\$ 11,747	\$ 19,090	\$ 39,743	\$ 18,827	\$ 20,916
	=====	=====	=====	=====	=====	=====

</TABLE>

Amortization expense recorded on the intangible assets listed in the above table for the three months and nine months ended May 31, 2002 was \$0.6 million and \$1.8 million, respectively, and \$0.6 million and \$1.9 million for the three months and nine months ended May 31, 2001, respectively. The reduction in gross carrying amount and accumulated amortization for non-compete agreements and other intangible assets in the table above reflect the removal of fully amortized intangible assets in fiscal 2002. The estimated amortization expense for each of the next five fiscal years is as follows:

2002.....	\$2,450
2003.....	\$2,195
2004.....	\$1,783
2005.....	\$1,600

2006..... \$1,579

Note 6. New Accounting Pronouncements

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," and the accounting and reporting provisions of Accounting Principles Board Opinion No. 30 related to the disposal of a segment of a business. The provisions of SFAS No. 144 are effective for fiscal years beginning after December 15, 2001, however earlier adoption is permitted. The Company does not expect the adoption of SFAS No. 144 will have a material impact on the consolidated financial statements.

In April 2002, the FASB issued SFAS No. 145, "Recission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections," related to accounting for debt extinguishments, leases, and intangible assets of motor carriers. The provisions of SFAS No. 145 are effective for fiscal years beginning after May 15, 2002 with earlier adoption encouraged. The Company is currently reviewing the provisions of SFAS No. 145 to determine the impact on its results of operations and financial condition.

Note 7. Debt

The Company's indebtedness, other than short-term borrowings, as of May 31, 2002 and August 31, 2001 was as follows:

<TABLE>  
<CAPTION>

	May 31, 2002	August 31, 2001
	-----	-----
<S>	<C>	<C>
Senior Secured Credit Facility		
Revolving credit borrowings.....	\$ 11,000	\$ 13,250
Tranche A term loans.....	--	10,376
New tranche A term loans.....	85,000	--
Tranche B term loans.....	--	90,487
	-----	-----
Sub-total - Senior Secured Credit Facility.....	96,000	114,113
Senior subordinated notes, due 2009 ("13% Notes").....	130,000	200,000
Less: initial issuance discount.....	(1,362)	(2,322)
	-----	-----
Senior subordinated notes, net of discount.....	128,638	197,678
Euro term loan.....	13,989	13,675
Other.....	--	286
	-----	-----
Total debt.....	238,627	325,752
Less: current maturities of long-term debt.....	(8,794)	--
	-----	-----
Total long-term debt.....	\$ 229,833	\$ 325,752
	=====	=====

</TABLE>

In the third quarter of fiscal 2002, the Company refinanced a portion of the Senior Secured Credit Facility. In conjunction with the refinancing, the remaining balances outstanding under tranche B term loans were extinguished and a new \$85 million tranche A term loan (the "New Tranche A Term Loans") was funded by existing bank lenders. The New Tranche A Term Loans have a final maturity in June 2006, are currently priced at LIBOR plus 2.25%, and are subject to a pricing grid, which allows for further reductions in the borrowing spread. See Note 9, "Extraordinary Items" for further information.

Annual amortization on the New Tranche A Term Loan is as follows:

Years ended August 31,

2002.....	\$ 1,849
2003.....	8,309
2004.....	11,985
2005.....	14,790
2006.....	48,067
	-----
Total.....	\$ 85,000

In addition, during the third quarter of fiscal 2002, the Company used the proceeds from a common stock offering completed in the second quarter of fiscal 2002 to redeem \$70 million of the 13% Notes. See Note 8, "Common Stock" and Note 9, "Extraordinary Items" for further information.



Note 8. Common Stock

In February 2002, the Company sold, pursuant to an underwritten public offering, 3,450,000 shares of its Class A common stock at a price of \$30.50 per share. Cash proceeds from the offering, net of underwriting discounts, were approximately \$99.7 million. In addition to underwriting discounts, the Company incurred approximately \$0.8 million of additional accounting, legal and other expenses related to the offering that were charged to additional paid-in capital. The proceeds were used to redeem a portion of the 13% Notes and retire portions of the Company's debt under the Senior Secured Credit Facility. See Note 7, "Debt" and Note 9, "Extraordinary Items" for further information.

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A reconciliation of the equity accounts affected by the common stock offering is as follows:

	Class A Common Stock	Additional Paid-in Capital
	-----	-----
Balance at August 31, 2001.....	\$ 1,603	\$ (623,867)
Common stock offering.....	690	98,265
Stock option exercises.....	25	1,165
Restricted stock awards.....	--	8
	-----	-----
Balance at May 31, 2002.....	\$ 2,318	\$ (524,429)
	=====	=====

Note 9. Extraordinary Items

In the third quarter of fiscal 2002, the Company recorded a pre-tax extraordinary charge of \$12.0 million, or \$7.8 million after-tax, related to the redemption of \$70 million of the Company's 13% Notes. The pre-tax charge consists of the \$9.1 million bond redemption premium payment and a \$2.9 million non-cash write-off of debt discount and debt issuance costs. The redemption was funded through proceeds from the common stock offering discussed in Note 8, "Common Stock."

Also in the third quarter of fiscal 2002, the Company recorded a pre-tax extraordinary charge of \$2.3 million, or \$1.5 million after-tax, related to the refinancing of a portion of the Senior Secured Credit Facility. The non-cash, pre-tax charge represents the write-off of a portion of the capitalized debt issuance costs from the original financing.

Note 10. Discontinued Operations and Distribution of Electronics Segment

On January 27, 2000, Applied Power Inc.'s ("Applied Power") board of directors authorized various actions to enable Applied Power to distribute its Electronics segment ("APW") to its shareholders. On July 31, 2000 the Company distributed the capital stock of APW to its shareholders (the "Distribution"). During the third quarter of fiscal 2002, APW and one of APW's wholly owned indirect subsidiaries, Vero Electronics, Inc. ("Vero"), commenced prepackaged bankruptcy cases in the United States Bankruptcy Court for the Southern District of New York. According to the disclosure statement of APW and Vero sent to creditors on or about May 3, 2002, Vero's sole business is to lease and sublease a single parcel of real estate. No other subsidiaries of APW have filed Chapter 11 cases. APW subsequently filed Amendment No. 1 to its bankruptcy plan on June 19, 2002.

In its bankruptcy filing, APW disclosed that it was rejecting the majority of the agreements entered into between APW and the Company at the time of the Distribution that govern a variety of indemnification matters between the parties. Those agreements include the Tax Sharing and Indemnification Agreement ("TSA") in which APW agreed to indemnify the Company for income tax liabilities in excess of \$1.0 million which could arise from any audit or other administrative or judicial proceedings resulting in adjustments ("Audit Adjustments") to the separate taxable income of APW or any of its subsidiaries which are included in the APW Group (as defined in the TSA) for periods prior to the Distribution, as well as all taxes related to the Distribution itself. If any Audit Adjustments were to result in an increased tax liability, such amount, to the extent not paid by APW (or such APW subsidiaries) could become payable by the Company without the benefit of the right to seek indemnification from APW under the TSA.

In the third quarter of fiscal 2002, the Company recorded a non-cash charge of \$10.0 million, or \$0.82 per diluted share, in "Discontinued Operations, net of Income Taxes" to reflect the preliminary rejection of indemnification agreements by APW. This charge provides for a contingent amount that otherwise would have been subject to indemnification by APW. The Company is presently holding approximately \$23 million of funds as to which the Company has asserted a right of offset against APW related to the agreements rejected by APW and which it intends to hold until the contingency is eliminated. In the event the Company is required to make expenditures for this contingent liability, such amounts will

first be paid from these funds. In the event that the Company is required to fund an amount in excess of these funds, such excess amount would come from operating cash flows and could potentially result in a materially adverse impact to the Company's financial position and results of operations. The Company and its tax advisors continue to review the impact of APW's preliminary rejection of the TSA including any contingent liabilities resulting therefrom. The Company anticipates that such review will be completed during the fourth quarter of this fiscal year. To the extent that additional information becomes available that changes the Company's view on its exposure from the rejection of the TSA, the Company will appropriately address such developments.

Prior to the Distribution, the Company, in the normal course of business, entered into certain real estate and equipment leases or guaranteed such leases on behalf of its subsidiaries, including those in its Electronics segment. In conjunction with the Distribution, the Company assigned its rights in the leases used in the Electronics segment to APW, but was not released as a responsible party from all such leases by the lessors. As a result, the Company

remains contingently liable for such leases. The discounted present value of future minimum lease payments for such leases totals approximately \$23.3 million at May 31, 2002. APW subsidiaries that are parties to these leases have not filed Chapter 11 cases and, as such, none of those leases have been rejected in the bankruptcies noted above. As such, the Company will not be responsible for any current payments under such lease agreements as a result of the bankruptcy cases commenced by APW and Vero. However, the Company remains contingently liable for those leases if APW or its subsidiaries are unable to fulfill their obligations thereunder. A future breach of these leases could, therefore, potentially have a material adverse impact upon the Company's financial position and results of operations.

In the third quarter of fiscal 2001, the Company recorded an \$0.8 million loss, or \$0.09 per diluted share, in "Discontinued Operations, net of Income Taxes" to reflect a change in estimate for Electronics segment liabilities assumed by the Company as part of the Distribution.

Note 11. Restructuring and Other Non-recurring Items

The Company adopted plans to restructure portions of its operations in the fiscal third quarter of 2001. These plans were designed to reduce administrative and operational costs and resulted in a charge of \$1.7 million, or \$1.0 million after-tax. Of the pre-tax charge, \$0.3 million related to the consolidation of RV slide-out production facilities, \$0.6 related to downsizing the cable tie production facility, and \$0.8 million related to other personnel reductions. The Company wrote down the fixed assets at the locations being closed or downsized to their fair value, less costs to sell, in the third quarter of fiscal 2001. As a result of these plans, the Company eliminated approximately 36 positions.

In the second quarter of fiscal 2002 the Company received net cash proceeds of approximately \$0.5 million from the sale of a former RV slide-out manufacturing facility. All restructuring initiatives contemplated by this plan have been completed.

A rollforward of the restructuring reserve is shown in the following table:

	August 31, 2001 Restructuring Reserve	Cash Payments	May 31, 2002 Restructuring Reserve
	-----	-----	-----
Severance.....	\$ 182	\$ 182	\$ --
Exit Costs.....	820	498	322
	-----	-----	-----
	\$ 1,002	\$ 680	\$ 322
	=====	=====	=====

The remaining restructuring reserve primarily relates to contractual lease payments on a facility idled as part of the cable tie production facility downsizing.

In May 2001, the Company recorded a charge in "Other Expense (Income)" of \$1.5 million, \$0.9 million after-tax, or \$0.11 per diluted share, for the net present value of future lease and holding costs on a building that had been occupied by a former division. At the time the Company sold the divested business in 1996, it received a five-year sub-lease with renewal options. Due to a change in control at the parent company of the divested business, the renewal option was not exercised.

Note 12. Gain on Insurance Settlement

In February 2001, one of the Company's facilities in Oldenzaal, The Netherlands was damaged by fire. The fire damaged a portion of the leased building, as well

as certain inventory and property, plant and equipment contained therein. Additionally, the fire impacted the shipment of product produced on the truck cab-tilt production line that was housed in the damaged facility. The Company was party to an insurance contract that covered the damaged inventory and equipment as well as the business interruption resulting from the fire. In the third quarter of fiscal 2001, the Company recorded a pre-tax gain of \$1.0 million to reflect the difference between the book value of the assets destroyed and the minimum reimbursement received for such assets during the quarter from the insurance carrier. During the second quarter of fiscal 2002, the Company settled its claim with the insurance company, and as a result recorded an additional gain of \$0.6 million. The new facility was operational as of May 31, 2002.

Note 13. Derivatives

All derivatives are recognized on the balance sheet at their estimated fair value. In the third quarter of fiscal 2001 the Company entered into an interest rate swap contract to convert \$25 million of its variable rate term debt to a fixed rate.

In the first quarter of fiscal 2002, the Company entered into a second contract to convert a further \$25 million of its variable rate term debt to a fixed rate. Unrealized gains (losses) of \$0.1 million and \$(0.2) million were recorded in other comprehensive income for the three and nine months ended May 31, 2002, respectively and \$(0.1) million for the three and nine months ended May 31, 2001. The Company recorded interest (expense) income of \$(0.1) million and \$0.1 million for the three and nine months ended May 31, 2002, respectively, to recognize the portion of a swap contract that became ineffective due to the pay down of term debt as a result of the common stock offering. In the third quarter of fiscal 2002, the Company redesignated the swap contracts to hedge its exposure to future interest payments on its variable rate senior credit facility instead of just the variable rate term debt. Therefore, at May 31, 2002, the remaining effective notional amount of contracts is approximately \$50 million.

Note 14. Earnings Per Share

The reconciliations between basic and diluted earnings per share are as follows:

	Three Months Ended May 31,		Nine Months Ended May 31,	
	2002	2001	2002	2001
<S>	<C>	<C>	<C>	<C>
<b>Numerator:</b>				
Earnings from continuing operations.....	\$8,263	\$ 1,458	\$ 16,862	\$ 8,841
Discontinued operations, net of income taxes.....	(10,000)	(781)	(10,000)	(781)
Extraordinary items, net of income taxes.....	(9,294)	--	(9,294)	--
Cumulative effect of change in accounting principle, net of income taxes.....	--	(7,200)	--	--
Net earnings (loss).....	<u>\$ (11,031)</u>	<u>\$ 677</u>	<u>\$ (9,632)</u>	<u>\$ 8,060</u>
<b>Denominator:</b>				
Weighted average common shares outstanding for basic earnings per share.....	11,587	7,948	9,454	7,937
Net effect of stock options based on the treasury stock method using average market price.....	649	287	541	360
Weighted average common and equivalent shares outstanding for diluted earnings per share.....	<u>12,236</u>	<u>8,235</u>	<u>9,995</u>	<u>8,297</u>
<b>Basic Earnings Per Share:</b>				
Earnings from continuing operations.....	\$ 0.71	\$ 0.18	\$ 1.78	\$ 1.11
Discontinued operations, net of income taxes.....	(0.86)	(0.10)	(1.06)	(0.10)
Extraordinary items, net of income taxes.....	(0.80)	--	(0.98)	--
Cumulative effect of change in accounting principle, net of income taxes.....	--	--	(0.76)	--
Basic earnings per share.....	<u>\$ (0.95)</u>	<u>\$ 0.09</u>	<u>\$ (1.02)</u>	<u>\$ 1.02</u>
<b>Diluted Earnings per Share:</b>				

Net earnings from continuing operations.....	\$ 0.68	\$ 0.18	\$ 1.69	\$ 1.07
Discontinued operations, net of income taxes.....	(0.82)	(0.09)	(1.00)	(0.09)
Extraordinary items, net of income taxes.....	(0.76)	--	(0.93)	--
Cumulative effect of change in accounting principle, net of income taxes.....	--	--	(0.72)	--
	-----	-----	-----	-----
Diluted earnings per share.....	\$ (0.90)	\$ 0.08	\$ (0.96)	\$ 0.97
	=====	=====	=====	=====

</TABLE>

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Note 15. Comprehensive Income

The components of comprehensive income are as follows:

Ended	Three Months Ended		Nine Months	
	May 31,		May 31,	
	2002	2001	2002	2001
-----	-----	-----	-----	-----
2001	-----	-----	-----	-----
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Net (loss) earnings.....	\$ (11,031)	\$ 677	\$ (9,632)	\$ 8,060
Foreign currency adjustments.....	2,108	(379)	85	(2,265)
Unrealized gain (loss) on interest rate swap, net of taxes.....	63	(57)	(238)	(57)
-----	-----	-----	-----	-----
Comprehensive income (loss).....	\$ (8,860)	\$ 241	\$ (9,785)	\$ 5,738
	=====	=====	=====	=====

</TABLE>

Note 16. Segment Information

The Company is organized and managed as two business segments: Tools & Supplies and Engineered Solutions, with separate and distinct operating management and strategies. The Tools & Supplies segment is primarily involved in the design, manufacture, and distribution of tools and supplies to the construction, electrical wholesale, retail do-it-yourself, industrial and production automation markets. The Engineered Solutions segment focuses on developing and marketing value-added, customized motion control systems for original equipment manufacturers in the recreational vehicle, automotive, truck, and industrial markets. "General corporate and other" as indicated below primarily includes general corporate expenses, financing costs on third party debt and foreign currency exchange adjustments.

The following table summarizes financial information by reportable segment:

	Three Months Ended		Nine Months Ended	
	May 31,		May 31,	
	2002	2001	2002	2001
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
Net Sales:				
Tools & Supplies.....	\$ 65,746	\$ 70,394	\$ 192,151	\$ 213,106
Engineered Solutions.....	54,263	55,714	149,432	148,319
-----	-----	-----	-----	-----
Total.....	\$ 120,009	\$ 126,108	\$ 341,583	\$ 361,425
	=====	=====	=====	=====

Earnings Before Income Tax Expense:

Tools & Supplies.....	\$ 10,655	\$ 9,221	\$ 31,225	\$
29,545				
Engineered Solutions.....	5,178	6,328	12,150	
15,902				
General Corporate and Other.....	(3,022)	(13,101)	(17,015)	
(30,532)				
-----	-----	-----	-----	-----
Total.....	\$ 12,811	\$ 2,448	\$ 26,360	\$
14,915	=====	=====	=====	

</TABLE>

Note 17. Guarantor Condensed Financial Statements

In July 2000, Actuant issued the 13% Notes. All of the Company's material domestic wholly owned subsidiaries (the "Guarantors") fully and unconditionally guarantee the 13% Notes on a joint and several basis. The Company believes separate financial statements and other disclosures concerning each of the Guarantors would not provide additional information that is material to investors. Therefore, the Guarantors are combined in the presentation below. There are no significant restrictions on the ability of the Guarantors to make distributions to Actuant. The following tables present the results of operations, financial position and cash flows of Actuant Corporation, the Guarantors and non-guarantor entities, and the eliminations necessary to arrive at the information for the Company and its subsidiaries on a condensed consolidated basis.

CONDENSED CONSOLIDATING STATEMENTS OF EARNINGS

	Three Months Ended May 31, 2002			
	Actuant Corporation	Guarantors	Non - Guarantors	Eliminations
-----	-----	-----	-----	-----
Consolidated				
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
<C>				
Net sales.....	\$ 20,247	\$ 60,224	\$ 39,538	\$ --
120,009				
Cost of products sold.....	10,654	41,593	26,170	--
78,417				
-----	-----	-----	-----	-----
Gross profit.....	9,593	18,631	13,368	--
41,592				
Selling, administrative, and engineering expenses.....	6,842	8,884	5,582	--
21,308				
Amortization of intangible assets.....	2	605	9	--
616				
-----	-----	-----	-----	-----
Operating earnings.....	2,749	9,142	7,777	--
19,668				
Other expense (income):				
Intercompany activity, net.....	(946)	460	486	--
--				
Net financing costs.....	6,556	240	118	--
6,914				
Other expense (income).....	140	59	(256)	--
(57)				
-----	-----	-----	-----	-----
(Loss) earnings from continuing operations before income tax expense.....	(3,001)	8,383	7,429	--
12,811				
Income tax expense.....	1,269	1,763	1,516	--
4,548				
-----	-----	-----	-----	-----
(Loss) earnings from continuing operations.....	(4,270)	6,620	5,913	--
8,263				
Discontinued operations, net of income taxes.....	(10,000)	--	--	--
(10,000)				

Extraordinary items, net of income taxes..... (9,294)	(9,294)	--	--	--
-----	-----	-----	-----	-----
Net (loss) earnings..... (11,031)	\$ (23,564)	\$ 6,620	\$ 5,913	\$ --
=====	=====	=====	=====	=====

<CAPTION>

CONDENSED CONSOLIDATING STATEMENTS OF EARNINGS

	Three Months Ended May 31, 2001			
Consolidated	Actuant Corporation	Guarantors	Non - Guarantors	Eliminations
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
<C>				
Net sales..... 126,108	\$ 19,415	\$ 66,053	\$ 40,640	\$ --
Cost of products sold..... 82,902	11,875	43,971	27,056	--
-----	-----	-----	-----	-----
Gross profit..... 43,206	7,540	22,082	13,584	--
Selling, administrative, and engineering expenses..... 23,405	5,700	9,992	7,713	--
Amortization of intangible assets..... 1,725	2	1,639	84	--
Restructuring charge..... 1,740	1,740	--	--	--
-----	-----	-----	-----	-----
Operating earnings..... 16,336	98	10,451	5,787	--
Other expense (income):				
Intercompany activity, net..... --	(2,009)	1,431	578	--
Net financing costs..... 12,711	12,153	8	550	--
Other expense (income)..... 1,177	1,409	12	(244)	--
-----	-----	-----	-----	-----
(Loss) earnings from continuing operations before income tax (benefit) expense..... 2,448	(11,455)	9,000	4,903	--
Income tax (benefit) expense..... 990	(4,010)	3,154	1,846	--
-----	-----	-----	-----	-----
(Loss) earnings from continuing operations..... 1,458	(7,445)	5,846	3,057	--
Discontinued operations, net of income taxes..... (781)	--	--	(781)	--
-----	-----	-----	-----	-----
Net (loss) earnings..... 677	\$ (7,445)	\$ 5,846	\$ 2,276	\$ --
=====	=====	=====	=====	=====

</TABLE>

CONDENSED CONSOLIDATING STATEMENTS OF EARNINGS

<TABLE>  
<CAPTION>

	Nine Months Ended May 31, 2002			
Consolidated	Actuant Corporation	Guarantors	Non - Guarantors	Eliminations
-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>
<C>				
Net sales.....	\$ 57,036	\$ 171,211	\$ 113,336	\$ --

341,583				
Cost of products sold.....	30,387	121,504	73,377	--
225,268				
-----				
Gross profit.....	26,649	49,707	39,959	--
116,315				
Selling, administrative, and engineering expenses.....	18,867	25,284	18,143	--
62,294				
Amortization of intangible assets.....	7	1,814	27	--
1,848				
-----				
Operating earnings.....	7,775	22,609	21,789	--
52,173				
Other expense (income):				
Intercompany activity, net.....	(2,611)	2,921	(310)	--
--				
Net financing costs.....	25,308	886	417	--
26,611				
Other expense (income).....	182	57	(1,037)	--
(798)				
-----				
(Loss) earnings from continuing operations				
26,360				
before income tax (benefit) expense.....	(15,104)	18,745	22,719	--
Income tax (benefit) expense.....	(1,452)	6,178	4,772	--
9,498				
-----				
(Loss) earnings from continuing operations.....	(13,652)	12,567	17,947	--
16,862				
Discontinued operations, net of income	(10,000)	--	--	--
(10,000)				
taxes.....				
Extraordinary items, net of income taxes.....	(9,294)	--	--	--
(9,294)				
Cumulative effect of change in accounting principle, net of income taxes.....	--	(7,200)	--	--
(7,200)				
-----				
Net (loss) earnings.....	\$ (32,946)	\$ 5,367	\$ 17,947	\$ --
(9,632)				
=====				

<CAPTION>

Nine Months Ended May 31, 2002

	Actuant Corporation	Guarantors	Non - Guarantors	Eliminations
Consolidated				
-----				
<S>	<C>	<C>	<C>	<C>
<C>				
Net sales.....	\$ 58,720	\$ 182,249	\$ 120,456	\$ --
361,425				
Cost of products sold.....	35,972	120,682	78,759	--
235,413				
-----				
Gross profit.....	22,748	61,567	41,697	--
126,012				
Selling, administrative, and engineering expenses.....	16,924	29,191	20,558	--
66,673				
Amortization of intangible assets.....	7	4,370	216	--
4,593				
Restructuring charge.....	1,740	--	--	--
1,740				
-----				
Operating earnings.....	4,077	28,006	20,923	--
53,006				
Other (income) expense:				
Intercompany activity, net.....	(4,297)	2,649	1,648	--
--				
Net financing costs.....	37,197	8	1,006	--
38,211				
Other (income) expense.....	(693)	26	547	--

(120)

(Loss) earnings from continuing operations before income tax (benefit) expense.....	14,915	(28,130)	25,323	17,722	--
Income tax (benefit) expense.....	6,074	(9,437)	9,403	6,108	--
(Loss) earnings from continuing operations. 8,841		(18,693)	15,920	11,614	--
Discontinued operations, net of income taxes.....	(781)	--	--	(781)	--
Net (loss) earnings.....	8,060	\$ (18,693)	\$ 15,920	\$ 10,833	\$ --

</TABLE>

CONDENSED CONSOLIDATING BALANCE SHEETS

<TABLE>  
<CAPTION>

	May 31, 2002			
	Actuant Corporation	Guarantors	Non - Guarantors	
Eliminations Consolidated				
<S>	<C>	<C>	<C>	<C>
<C>				
ASSETS				
Current assets				
Cash and cash equivalents .....	\$ 22,485	\$ (449)	\$ 5,563	\$ --
\$ 27,599				
Accounts receivable, net .....	1,989	--	52,694	--
54,683				
Inventories, net .....	13,327	31,931	10,670	--
55,928				
Deferred income taxes .....	8,542	10	819	--
9,371				
Other current assets .....	1,767	610	1,755	--
4,132				
Total current assets .....	48,110	32,102	71,501	--
151,713				
Property, plant and equipment, net .....	5,198	21,508	11,337	--
38,043				
Goodwill, net .....	--	96,597	4,771	--
101,368				
Other intangible assets, net .....	2	19,033	55	--
19,090				
Other long-term assets .....	9,363	204	530	--
10,097				
Total assets .....	\$ 62,673	\$ 169,444	\$ 88,194	\$
\$ 320,311				

LIABILITIES AND EQUITY

Current liabilities				
Short-term borrowings .....	\$ --	\$ --	\$ 1,178	\$ --
\$ 1,178				
Current maturities of long-term debt .....	7,395	--	1,399	--
8,794				
Trade accounts payable .....	8,424	17,550	14,064	--
40,038				
Accrued compensation and benefits .....	3,087	2,024	4,593	--
9,704				
Income taxes payable .....	34,489	6,264	2,608	--
43,361				
Other current liabilities .....	5,407	6,795	1,825	--
14,027				



--	-----	-----	-----	-----	-----
	Total current liabilities .....	58,802	32,633	25,667	--
117,102					
	Long-term debt .....	217,244	--	12,589	--
229,833					
	Deferred income taxes .....	5,063	(1,016)	39	--
4,086					
	Other long-term liabilities .....	18,443	--	206	--
18,649					
	Intercompany balances, net .....	(398,182)	(96,579)	(178,931)	673,692
--					
	Total shareholders' equity (deficit) .....	161,303	234,406	228,624	(673,692)
(49,359)					
--	-----	-----	-----	-----	-----
	Total liabilities and shareholders' equity .....	\$ 62,673	\$ 169,444	\$ 88,194	\$ --
\$ 320,311					
=====	=====	=====	=====	=====	=====

</TABLE>

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CONDENSED CONSOLIDATING BALANCE SHEETS

<TABLE>  
<CAPTION>

August 31, 2001						
	Actuant Corporation	Guarantors	Non-Guarantors	Eliminations	Consolidated	
<S>	<C>	<C>	<C>	<C>	<C>	
ASSETS						
Current assets						
	Cash and cash equivalents .....	\$ 25,785	\$ 621	\$ 148	\$ --	\$ 26,554
	Accounts receivable, net .....	3,233	5,625	46,113	--	54,971
	Inventories, net .....	14,606	31,920	10,212	--	56,738
	Deferred income taxes .....	5,333	11	489	--	5,833
	Other current assets .....	1,132	498	3,444	--	5,074
	Total current assets .....	50,089	38,675	60,406	--	149,170
	Property, plant and equipment, net .....	4,335	25,923	9,224	--	39,482
	Goodwill, net .....	--	103,219	4,905	--	108,124
	Other intangible assets, net .....	9	20,847	60	--	20,916
	Other long-term assets .....	24,087	168	769	--	25,024
	Total assets .....	\$ 78,520	\$ 188,832	\$ 75,364	\$ --	\$ 342,716

LIABILITIES AND EQUITY

Current liabilities

	Short-term borrowings .....	\$ --	\$ --	\$ 1,568	\$ --	\$ 1,568
	Trade accounts payable .....	10,062	17,297	12,439	--	39,798
	Accrued compensation and benefits ...	4,608	1,698	4,349	--	10,655
	Income taxes payable .....	32,416	9,785	7,833	--	50,034
	Other current liabilities .....	20,189	9,237	2,708	--	32,134
	Total current liabilities .....	67,275	38,017	28,897	--	134,189
	Long-term debt .....	311,656	420	13,676	--	325,752
	Deferred income taxes .....	5,043	(1,027)	(109)	--	3,907
	Other long-term liabilities .....	18,384	--	238	--	18,622
	Intercompany balances, net .....	(491,161)	(55,907)	(198,212)	745,280	--
	Total shareholders' equity (deficit) .....	167,323	207,329	230,874	(745,280)	(139,754)
	Total liabilities and shareholders' equity	\$ 78,520	\$ 188,832	\$ 75,364	\$ --	\$ 342,716

</TABLE>

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CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS

<TABLE>  
<CAPTION>

Nine Months Ended May 31, 2002

Actuant Corporation	Non-Guarantors	Guarantors	Eliminations
---------------------	----------------	------------	--------------

## Consolidated

<S>	<C>	<C>	<C>	<C>	<C>
Operating activities					
Net (loss) earnings from continuing operations..	\$ (13,652)	\$ 12,567	\$ 17,947	\$ --	\$
16,862					
Adjustments to reconcile net (loss) earnings to cash provided by (used in) operating activities:					
Depreciation and amortization .....	1,240	5,704	2,147	--	
9,091					
Amortization of debt discount and debt issuance costs .....	1,943	--	--	--	
1,943					
Cash payments on the Mox-Med divestiture ...	(6,961)	--	--	--	
(6,961)					
Other non-cash items .....	120	(1)	(223)	--	
(104)					
Changes in operating assets and liabilities, net .....	(80,109)	22,247	(31,551)	71,661	
(17,752)					
Net cash provided by (used in) operating .....	(97,419)	40,517	(11,680)	71,661	
3,079					
activities					
Investing activities					
Proceeds from sale of property, plant and equipment .....	3	1,662	14	--	
1,679					
Proceeds from insurance recovery .....	--	--	2,858	--	
2,858					
Additions to property, plant and equipment ....	(1,306)	(1,793)	(4,401)	--	
(7,500)					
Business acquisitions .....	--	(785)	--	--	
(785)					
Net cash (used in) provided by investing .....	(1,303)	(916)	(1,529)	--	
(3,748)					
activities					
Financing activities					
Payment on 13% Notes .....	(70,000)	--	--	--	
(70,000)					
Payment of 13% Notes redemption premium .....	(9,100)	--	--	--	
(9,100)					
Issuance of long-term debt .....	85,000	--	--	--	
85,000					
Net principal payments on debt .....	(103,147)	--	(791)	--	
(103,938)					
Net proceeds from issuance of common stock ....	99,705	--	--	--	
99,705					
Debt issuance costs .....	(1,206)	--	--	--	
(1,206)					
Proceeds from stock option exercises .....	1,190	--	--	--	
1,190					
Intercompany payables (receivables) .....	92,980	(40,671)	19,352	(71,661)	
--					
Net cash provided by (used in) financing .....	95,422	(40,671)	18,561	(71,661)	
1,651					
activities					
Effect of exchange rate changes on cash .....	--	--	63	--	
63					
Net increase (decrease) in cash and cash equivalents .....	(3,300)	(1,070)	5,415	--	
1,045					
Cash and cash equivalents--beginning of period ...	25,785	621	148	--	
26,554					
Cash and cash equivalents--end of period.....	\$ 22,485	\$ (449)	\$ 5,563	\$ --	\$
27,599					

CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS

<TABLE>  
<CAPTION>

		Nine Months Ended May 31, 2001			
Eliminations Consolidated		Actuant Corporation	Guarantors	Non - Guarantors	
		<C>	<C>	<C>	<C>
<b>Operating activities</b>					
Net (loss) earnings from continuing operations .....		\$(18,693)	\$ 15,920	\$ 11,614	\$ -
- \$ 8,841					
Adjustments to reconcile net (loss) earnings to cash provided by (used in) operating activities:					
Depreciation and amortization .....		1,440	8,871	2,058	-
- 12,369					
Amortization of debt discount and debt issuance costs .....		1,658	--	--	-
- 1,658					
Other non-cash items .....		(1,084)	--	--	-
- (1,084)					
Changes in operating assets and liabilities, net .....		67,821	(36,972)	21,894	
(28,257) 24,486					
<b>Net cash provided by (used in) continuing operations .....</b>					
(28,257) 46,270		51,142	(12,181)	35,566	
<b>Cash used in discontinued operations .....</b>					
(1,311) (1,311)		--	--	--	
<b>Net cash provided by (used in) operating activities .....</b>					
(29,568) 44,959		51,142	(12,181)	35,566	
<b>Investing activities</b>					
Proceeds from sale of property, plant and equipment .....		1,907	--	--	-
- 1,907					
Proceeds from insurance recovery .....		--	--	1,118	-
- 1,118					
Additions to property, plant and equipment .....		(760)	(1,921)	(2,596)	--
(5,277)					
Business acquisitions .....		--	(11,250)	--	-
- (11,250)					
Business dispositions and other .....		--	238	954	-
- 1,192					
<b>Net cash used in investing activities .....</b>					
(12,310)		1,147	(12,933)	(524)	--
<b>Financing activities</b>					
Issuance of long-term debt .....		--	--	12,652	-
- 12,652					
Net principal payments on debt .....		(54,643)	(120)	(146)	--
(54,909)					
Debt issuance costs .....		(147)	--	--	-
- (147)					
Proceeds from stock option exercises .....		437	--	--	-
- 437					
Intercompany payables (receivables) .....		(2,095)	24,414	(51,887)	29,568
--					
<b>Net cash (used in) provided by financing activities.....</b>					
(41,967)		(56,448)	24,294	(39,381)	29,568
<b>Effect of exchange rate changes on cash .....</b>					
- 54		--	--	54	-
<b>Net decrease in cash and cash equivalents .....</b>					
(9,264)		(4,159)	(820)	(4,285)	--
<b>Cash and cash equivalents--beginning of period .....</b>					
- 9,896		5,076	721	4,099	-

---	-----	-----	-----	-----
Cash and cash equivalents--end of period .....	\$ 917	\$ (99)	\$ (186)	\$ -
- \$ 632				
=====	=====	=====	=====	

Item 2 - Management's Discussion and Analysis of Financial Condition and Results of Operations

Throughout this "Management's Discussion and Analysis of Financial Condition and Results of Operations" when we refer to "Actuant" or the "Company," we mean Actuant Corporation and its subsidiaries. The Company's significant accounting policies are disclosed in the Notes to Consolidated Financial Statements in the fiscal 2001 Annual Report on Form 10-K. The more critical of these policies include revenue recognition, inventory valuation, goodwill and other intangible asset accounting, and the use of estimates, which are summarized below.

Revenue Recognition: Revenue is recognized when title to the products being sold transfers to the customer, which is generally upon shipment. The Company's revenue recognition policies are in accordance with Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements."

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 62% of total inventories at August 31, 2001). The first-in, first-out or average cost method is used for all other inventories. If the LIFO method were not used, the inventory balance would be higher than the amount in the Condensed Consolidated Balance Sheet by approximately \$7.1 million at August 31, 2001.

Goodwill and Other Intangible Assets: Other intangible assets, consisting primarily of purchased patents, trademarks and noncompete agreements, are amortized over periods from three to twenty-five years. Goodwill is not amortized, but is subjected to annual impairment testing in accordance with the provisions of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets."

Use of Estimates: As required under generally accepted accounting principles, the condensed consolidated financial statements include 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. See Note 10, "Discontinued Operations and Distribution of Electronics Segment" to the accompanying consolidated financial statements. Actual results could differ from those estimates and assumptions.

Results of Operations for the Three and Nine Months Ended May 31, 2002 and 2001

During fiscal year 2001, the Company divested one business and one product line that were not considered integral to the Company's business strategy, collectively referred to as the "non-continuing businesses." The following table summarizes the divestitures that were completed:

Divestitures	Segment	Date	Approximate Annual Sales /(1)/
- - - - -	-----	----	-----
			(in millions)
<S>	<C>	<C>	<C>
Quick Mold Change ("QMC")	Tools & Supplies	May 2001	\$ 6
Mox-Med	Engineered Solutions	August 2001	18

/(1)/ At the time of the transactions.

The comparability of operating results from period to period is impacted by the non-continuing businesses. The tables below show the effect, by segment, of the non-continuing businesses on reported results. In addition, a subsidiary of the Company acquired the operations of Dewald Manufacturing, Inc. in March 2001, which impacts the comparability of the operating results for the nine months ended May 31, 2002.

Earnings from continuing operations for the three and nine months ended May 31, 2002 were \$8.3 million, or \$0.68 per diluted share, and \$16.9 million, or \$1.69 per diluted share, respectively. During the third quarter of fiscal 2002, the Company recorded a non-cash discontinued operations charge of \$10.0 million, or \$0.82 per diluted share, for the preliminary rejection of indemnification agreements between APW Ltd. and the Company by APW Ltd. in its bankruptcy

filing. This charge provides for a contingent amount that otherwise would have been subject to indemnification by APW. The Company also recorded in the third quarter of fiscal 2002 an extraordinary charge of \$9.3 million, or \$0.76 per diluted share, for early extinguishment of debt. During the first quarter of fiscal 2002, the Company recorded a charge of \$7.2 million, or \$0.72 per diluted share, for the cumulative effect of a change in accounting principle related to the adoption of Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets." Including these charges, the net earnings (loss) for the nine months ended May 31, 2002 were \$(9.6) million, or \$(0.96) per diluted share, compared with \$8.1 million, or \$0.97 per diluted share, for the nine months ended May 31, 2001.

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Following are detailed discussions of the components of our operating results for the periods ended May 31, 2002 and 2001.

<TABLE>  
<CAPTION>

Net Sales by Segment  (in thousands) Change	Three Months Ended May 31,			Nine Months Ended May 31,	
	2002	2001	Change	2002	2001
<S> <C>	<C>	<C>	<C>	<C>	<C>
Tools & Supplies..... (9.8)%	\$ 65,746	\$ 70,394	(6.6)%	\$ 192,151	\$ 213,106
Less: Non-continuing / (1) /..... --	--	1,122	--	--	3,339
Adjusted Tools & Supplies..... (8.4)%	65,746	69,272	(5.1)%	192,151	209,767
Engineered Solutions..... 0.8%	54,263	55,714	(2.6)%	149,432	148,319
Less: Non-continuing / (2) /..... --	-	4,760	--	--	13,433
Adjusted Engineered Solutions... 10.8%	54,263	50,954	6.5%	149,432	134,886
Total net sales..... (5.5)%	120,009	126,108	(4.8)%	341,583	361,425
Less: Non-continuing Businesses.... --	--	5,882	--	--	16,772
Total adjusted net sales..... (0.9)%	\$ 120,009	\$ 120,226	(0.2)%	\$ 341,583	\$ 344,653

</TABLE>

- (1) "Non-continuing" represents the divested QMC business of the Tools & Supplies segment.
- (2) "Non-continuing" represents the divested Mox-Med business of the Engineered Solutions segment.

Total net sales decreased by \$6.1 million, or 4.8%, from \$126.1 million for the three months ended May 31, 2001 to \$120.0 million for the three months ended May 31, 2002. Currency translation rate changes did not significantly impact the quarterly results. Total net sales decreased by \$19.8 million, or 5.5% from \$361.4 million for the nine months ended May 31, 2001 to \$341.6 million for the nine months ended May 31, 2002. Currency translation rate changes negatively impacted the nine-month results causing \$1.1 million of the reported sales decline in 2002. Excluding the non-continuing businesses, adjusted net sales declined 0.2% and 0.9% for the three and nine-month periods ended May 31, 2002. Net sales in the three and nine-month periods ending May 31, 2002 include the results of Dewald Manufacturing, Inc. which was acquired in March 2001. Assuming Dewald had been acquired on September 1, 2000, and its sales therefore included in our operating results in all of the fiscal 2001 periods presented, adjusted net sales would have decreased 4.1% for the nine months ended May 31, 2002, primarily as a result of weaker economic conditions in the Company's served markets.

Tools & Supplies

Net sales for Tools & Supplies decreased by \$4.6 million or 6.6%, from \$70.4 million for the three months ended May 31, 2001 to \$65.8 million for the three months ended May 31, 2002. The QMC business, which was sold in fiscal 2001 comprised \$1.1 million of the decline. The remaining \$3.5 million decrease was driven primarily by weaker economic conditions in North America, which caused decreases in sales to most of the markets served by the Tools & Supplies segment. Our sales to European and Asian customers decreased by approximately \$0.8 million.

Tools & Supplies net sales for the nine months ended May 31, 2002 declined \$20.9 million, or 9.8%, from \$213.1 million for the nine months ended May 31, 2001 to \$192.2 million. This decrease is comprised of the elimination of QMC sales of \$3.3 million, the negative impact of currency translation rates of \$0.9 million, the negative impact of the September 11, 2001 terrorist actions and the impact of the poor economic conditions in North America as described above. Although adjusted third quarter sales were 5.1% lower than the previous fiscal year third quarter, this decrease is sequentially better than the 10% declines experienced in the first and second quarters of fiscal 2002 as compared to fiscal 2001.

#### Engineered Solutions

Engineered Solutions net sales decreased \$1.4 million, or 2.6%, from \$55.7 million for the three months ended May 31, 2001 to \$54.3 million for the three months ended May 31, 2002. Excluding the results of Mox-Med, which we divested in August 2001, Engineered Solutions net sales increased 6.5%. This increase is attributable to higher recreational vehicle ("RV") OEM production levels, offset by decreased sales to our global truck and off-highway customers.

Engineered Solutions net sales for the nine months ended May 31, 2002 increased \$1.1 million, or 0.8%, from \$148.3 million for the nine months ended May 31, 2001 to \$149.4 million. Excluding the impact of Mox Med, which was sold in 2001, Engineered Solutions net sales for the nine-month period increased \$14.5 million, or 10.8%. This increase in

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adjusted net sales is comprised of the improvement in RV market demand, as well as the incremental impact of Dewald sales, offset by decreases in demand from our global truck and off-highway customers.

#### Gross Profit

The following table summarizes gross profit and gross profit margins for the three and nine months ended May 31, 2002 and 2001:

<TABLE>  
<CAPTION>

Gross Profit by Segment (in thousands) Change	Three Months Ended May 31,			Nine Months Ended May 31,	
	2002	2001	Change	2002	2001
Tools & Supplies.....	\$ 27,417	\$ 27,910	(1.8)%	\$ 80,018	\$ 84,728
(5.6)%					
Less: Non-continuing/ (1) /.....	--	434	--	--	1,266
--					
Adjusted Tools & Supplies.....	27,417	27,476	(0.2)%	80,018	83,462
(4.1)%					
Engineered Solutions.....	14,175	15,296	(7.3)%	36,297	41,284
(12.1)%					
Less: Non-continuing/ (2) /.....	--	2,150	--	--	6,182
--					
Adjusted Engineered Solutions.....	14,175	13,146	7.8%	36,297	35,102
3.4%					
Total gross profit.....	\$ 41,592	\$ 43,206	(3.7)%	\$ 116,315	\$ 126,012
(7.7)%					
Less: Non-continuing .....	--	2,584	--	--	7,448
--					
Total adjusted gross profit.....	\$ 41,592	\$ 40,622	2.4%	\$ 116,315	\$ 118,564
(1.9)%					

Gross Profit Margins by Segment

Tools & Supplies.....	41.7%	39.6%	41.6%	39.8%
Adjusted Tools & Supplies.....	41.7%	39.7%	41.6%	39.8%
Engineered Solutions.....	26.1%	27.5%	24.3%	27.8%
Adjusted Engineered Solutions.....	26.1%	25.8%	24.3%	26.0%
Total gross profit margin.....	34.7%	34.3%	34.1%	34.9%
Total adjusted gross profit margin.....	34.7%	33.8%	34.1%	34.4%

</TABLE>

- (1) "Non-continuing" represents the divested QMC business of the Tools & Supplies segment.  
 (2) "Non-continuing" represents the divested Mox-Med business of the Engineered Solutions segment.

Total gross profit for the third quarter of fiscal 2002 was \$41.6 million, a \$1.6 million decline from the \$43.2 million reported in the third quarter of fiscal year 2001. Gross profit decreased \$9.7 million, or 7.7%, from \$126.0 million to \$116.3 million for the nine months ended May 31, 2001 and 2002, respectively. Excluding the gross profit generated by the non-continuing businesses, gross profit increased by \$1.0 million, or 2.4%, for the three months ended May 31, 2002, and decreased by \$2.2 million, or 1.9%, for the nine months ended May 31, 2002. The majority of this reduction in gross profit for the nine months ended May 31, 2002 is the result of lower sales volume, as explained above. Total gross profit margin increased from 34.3% to 34.7% for the three months ended May 31, 2002 and decreased from 34.9% to 34.1% for the nine months ended May 31, 2002 due to margin declines in the Engineered Solutions segment, offset by margin expansion in the Tools & Supplies segment.

Tools & Supplies

Tools & Supplies gross profit decreased \$0.5 million, or 1.8%, from \$27.9 million to \$27.4 million for the three months ended May 31, 2001 and 2002, respectively. For the nine months ended May 31, 2002 gross profit decreased \$4.7 million, or 5.6%, to \$80.0 million from the \$84.7 million of gross profit recognized for the nine months ended May 31, 2001. These decreases resulted from the lower sales levels in fiscal 2002 as compared to fiscal 2001 and the impact of the non-continuing Tools & Supplies business. Although gross profit decreased, Tools & Supplies gross profit margins increased for the three and nine month periods due to the realization of the benefits of cost reduction and restructuring activities in both the hydraulic and electrical tool businesses, including material cost reductions, personnel reductions and facility downsizing.

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Engineered Solutions

Engineered Solutions gross profit decreased \$1.1 million, or 7.3%, from \$15.3 million to \$14.2 million for the three months ended May 31, 2001 and 2002, respectively. Excluding the impact of the non-continuing business, gross profit increased by \$1.0 million, or 7.8%, due largely to the impact of higher sales and slightly higher gross margins as compared to the prior year third quarter. For the nine months ended May 31, 2002 gross profit decreased \$5.0 million, or 12.1%, to \$36.3 million from the \$41.3 million of gross profit recognized for the nine months ended May 31, 2001. Excluding the impact of the non-continuing business, gross profit increased by \$1.2 million, or 3.4%, due largely to the impact of higher sales offset by lower gross margins. These lower margins result from production inefficiencies associated with the consolidation of our RV facilities, lower fixed cost absorption at our more vertically integrated Milwaukee Cylinder and Nielsen Sessions operations due to lower sales and production levels as compared to the prior year, and higher prototype costs in the automotive operations to support new platform development. Adjusted gross margins have increased from 23.6% and 22.9% in the first and second quarters, respectively, to 26.1% in the third quarter primarily due to lower costs in the third quarter associated with the RV manufacturing plant consolidation, which occurred during the first half of fiscal 2002, and better fixed cost absorption at our plants.

Selling, Administrative, and Engineering ("SAE")  
 Expense by Segment  
 (in thousands)

<TABLE>  
 <CAPTION>

-----  
 Three Months Ended  
 May 31,

-----  
 Nine Months Ended  
 May 31,

	2002	2001	Change	2002	2001	
Change						
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Tools & Supplies.....	\$ 14,200	\$ 16,536	(14.1)%	\$ 43,381	\$ 48,256	
(10.1)%						
Less: Non-continuing / (1)/.....	--	415	--	--	1,512	--
Adjusted Tools & Supplies.....	14,200	16,121	(11.9)%	43,381	46,744	
(7.2)%						
Engineered Solutions.....	5,654	5,453	3.7%	15,349	14,511	
5.8%						
Less: Non-continuing / (2)/.....	--	638	--	--	1,728	--
Adjusted Engineered Solutions.....	5,654	4,815	17.4%	15,349	12,783	
20.1%						
General Corporate.....	1,454	1,416	2.7%	3,564	3,906	
(8.8)%						
Total SAE expense.....	21,308	23,405	(9.0)%	62,294	66,673	
(6.6)%						
Less: Non-continuing Businesses.....	--	1,053	--	--	3,240	--
Total adjusted SAE expense.....	\$ 21,308	\$ 22,352	(4.7)%	\$ 62,294	\$ 63,433	
(1.8)%						
	=====	=====		=====	=====	

</TABLE>

- (1) "Non-continuing" represents the divested QMC business of the Tools & Supplies segment.  
(2) "Non-continuing" represents the divested Mox-Med business of the Engineered Solutions segment.

Total SAE expenses decreased \$2.1 million, or 9.0%, from \$23.4 million for the three months ended May 31, 2001 to \$21.3 million for the three months ended May 31, 2002. SAE decreased \$4.4 million, or 6.6%, from \$66.7 million to \$62.3 million for the nine months ended May 31, 2001 and 2002, respectively. Approximately \$1.1 and \$3.2 million of the reductions, for the three and nine months ended May 31, 2002, respectively, were due to the non-continuing businesses. The remainder of the declines were due to lower variable selling expense and cost reductions.

#### Tools & Supplies

Tools & Supplies SAE expenses decreased \$2.3 million, or 14.1%, from \$16.5 million for the three months ended May 31, 2001 to \$14.2 million for the three months ended May 31, 2002. For the nine-month periods ended May 31, 2001 and 2002, SAE expenses decreased \$4.9 million from \$48.3 million to \$43.4 million, or 10.1%. The non-continuing Tools & Supplies business comprised \$0.4 million and \$1.5 million of the decrease for the three and nine months ended May 31, 2002, respectively. The remaining decrease resulted from cost reduction efforts initiated in fiscal 2001 and lower variable selling and marketing costs due to lower sales levels.

#### Engineered Solutions

Engineered Solutions SAE expenses increased \$0.2 million, or 3.7%, from \$5.5 million for the three months ended May 31, 2001 to \$5.7 million for the three months ended May 31, 2002. For the nine-month periods ended May 31, 2001 and 2002, SAE expenses increased \$0.8 million from \$14.5 million to \$15.3 million, or 5.8%. Excluding the non-continuing business, Engineered Solutions adjusted SAE expenses increased 17.4% and 20.1% for the three and nine months ended May 31, 2002, respectively. These increases in SAE were a result of the inclusion of SAE costs for Dewald, which was acquired March 1, 2001, non-accruable costs associated with the consolidation of RV production

facilities, and a high level of engineering development costs related to convertible top actuation for new automotive models.

#### Amortization Expense

Amortization expense for the three months and nine months ended May 31, 2002 was \$0.6 million and \$1.8 million, respectively, compared with \$1.7 million and \$4.6 million for the comparable prior year periods. These decreases were primarily due to ceasing goodwill amortization in accordance with SFAS No. 142. See Note 5 to the Condensed Consolidated Financial Statements, "Goodwill and Other Intangible Assets," for more information on this change in accounting principle.



#### Restructuring Charge

The Company adopted plans to restructure portions of its operations in the third quarter of fiscal 2001. These plans were designed to reduce administrative and operational costs and resulted in a charge of \$1.7 million, \$1.0 million after-tax, or \$0.13 per diluted share. Of the pre-tax charge, \$0.3 million related to the consolidation of the RV slide production facilities, \$0.6 million related to the downsizing of the cable tie production facility, and \$0.8 million related to a staff reduction plan. The Company wrote down the fixed assets at the locations to be closed or downsized to their fair value, less costs to sell in the third quarter of fiscal 2001.

#### Net Financing Costs

Net financing costs for the three months and nine months ended May 31, 2002 decreased \$5.8 million and \$11.6 million, respectively, compared to the respective prior year periods. These reductions were primarily due to the combined effect of lower market interest rates and reduced debt levels in fiscal 2002. See "Liquidity and Capital Resources" below for further information regarding the composition of our debt and the impact of our fiscal 2002 second quarter equity offering.

#### Other Expense (Income)

Other expense (income) for the three and nine months ended May 31, 2002 and 2001 is comprised of the following (in thousands):

<TABLE>  
<CAPTION>

	Three Months Ended May 31,		Nine Months Ended May 31,	
	2002	2001	2002	2001
<S>	<C>		<C>	
Gain on insurance recovery.....	\$ --	\$ (983)	\$ (623)	\$ (983)
Loss on sale of QMC.....	--	619	--	619
Net present value of idled lease.....	--	1,531	--	1,531
Net foreign currency transaction gain....	(12)	(344)	(70)	(1,641)
Other, net.....	(45)	354	(105)	354
Other expense (income).....	\$ (57)	\$ 1,177	\$ (798)	\$ (120)

</TABLE>

#### Discontinued Operations

In the third quarter of fiscal 2002, the Company recorded a non-cash charge of \$10.0 million, or \$0.82 per diluted share, in "Discontinued Operations, net of Income Taxes" to reflect the preliminary rejection of indemnification agreements by APW in their bankruptcy filing. See Note 10, "Discontinued Operations and Distribution of Electronics Segment" to the accompanying consolidated financial statements for further information.

In the third quarter of fiscal 2001, the Company recorded an \$0.8 million loss, or \$0.09 per diluted share, in "Discontinued Operations, net of Income Taxes" to reflect a change in estimate for Electronics segment liabilities assumed by the Company as part of the Distribution.

#### Extraordinary Items

As a result of the redemption of a portion of the 13% Notes, in March 2002 the Company recorded a pre-tax extraordinary charge of approximately \$12.0 million, \$7.8 million after-tax or \$0.64 per diluted share, for the \$9.1 million payment of the redemption premium associated with the 13% Notes and the \$2.9 million non-cash write-off of the associated debt discount and issuance costs. See Note 9, "Extraordinary Items" for further information.

Also in the fiscal third quarter, as a result of the refinancing of the Company's Senior Secured Credit Facility, the Company recorded a non-cash, pre-tax extraordinary charge of approximately \$2.3 million, \$1.5 million after tax or \$0.12 per diluted share, for the write-off of a portion of the capitalized debt issuance costs. See Note 9, "Extraordinary Items" for further information.

#### Cumulative Effect of Change in Accounting Principle

On September 1, 2001 the Company adopted SFAS No. 142. Under the transitional provisions of SFAS No. 142, the Company identified its reporting units and performed impairment tests on the net goodwill associated with each of the reporting units. The Company recorded an impairment loss associated with its Milwaukee Cylinder reporting unit of \$7.2 million, or \$0.85 per diluted share in the first quarter of fiscal 2002. See Note 5 to the Condensed Consolidated Financial Statements, "Goodwill and Other Intangible Assets," for further discussion.

## Liquidity and Capital Resources

Cash and cash equivalents totaled \$27.6 million and \$26.6 million at May 31, 2002 and August 31, 2001, respectively. The Company is presently holding approximately \$23 million of funds that relate to APW, which it intends to hold until the expiration of the contingency discussed in Note 10, "Discontinued Operations and Distribution of Electronics Segment" in the accompanying condensed consolidated financial statements. In the event the Company is required to make expenditures for this contingent liability, such amounts will first be paid from these funds. In the event that the Company is required to fund an amount in excess of these funds, such excess amount would come from operating cash flows and could potentially result in a materially adverse impact to the Company's financial position and results of operations.

Net cash provided by operating activities of continuing operations was \$3.1 million for the nine months ended May 31, 2002, compared to \$46.3 million for the nine months ended May 31, 2001. Fiscal year to date 2002 operating cash flows are lower than the prior year because the prior year operating cash flows include the initial proceeds from the Company's accounts receivable securitization program of \$30.0 million. In addition, fiscal 2002 nine month operating cash flows include cash payments made for the semi-annual interest on our 13% Notes totaling \$24.8 million, which is \$5.3 million higher than the interest payments for the nine months ended May 31, 2001. This resulted from the fact that only nine months of interest was paid in fiscal 2001 compared to twelve months in fiscal 2002, given the issuance date of the bonds. Also, in the first quarter of fiscal 2002, income tax and transaction costs of approximately \$7.0 million were paid related to the August 2001 sale of Mox-Med. There were no similar payments for Mox-Med in the prior year. The Company also paid \$0.7 million related to restructuring activities in fiscal 2002 as compared to \$0.2 million in fiscal 2001.

Net cash used in investing activities totaled \$3.7 million and \$12.3 million for the nine months ended May 31, 2002 and 2001, respectively. In fiscal 2002, this cash was used to fund capital expenditures of \$7.5 million and pay the deferred purchase price related to the Dewald acquisition, partially offset by cash proceeds of \$1.7 million on the sale of two facilities and \$2.9 million of recoveries under an insurance contract. In fiscal 2001, the net cash used in investing activities primarily consisted of cash paid for acquisitions of \$11.3 million and capital expenditures of \$5.3 million, offset by insurance proceeds of \$1.1 million and proceeds from the sale of fixed assets of \$1.9 million.

Cash provided by financing activities was \$1.7 million for the nine months ended May 31, 2002, as compared to cash used in financing activities of \$42.0 million for the nine months ended May 31, 2001. Cash provided from financing activities for the nine months ended May 31, 2002 primarily reflects the proceeds of the equity offering and Senior Secured Credit Facility refinancing, offset by debt repayments of both the 13% Notes and the Senior Secured Credit Facility as described below and the payment of the redemption premium on the 13% Notes. Cash used in financing activities for the nine months ended May 31, 2001 primarily reflects net debt repayments.

The Company issued 3,450,000 shares of previously unissued shares of Class A Common Stock in February 2002 for \$30.50 per share (the "Equity Offering"). Cash proceeds from the Equity Offering, net of underwriting discounts, were approximately \$99.7 million. The primary objectives of the Equity Offering were to 1) redeem \$70 million of the 13% Notes prior to the April 2003 expiration of our optional redemption feature, 2) reduce overall debt to improve financial stability and flexibility, 3) increase the "float" of the Company's common stock in the capital markets, and 4) increase the awareness of Actuant Corporation among United States investors. See Note 8, "Common Stock" and Note 9, "Extraordinary Items" for further information regarding the equity offering.

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Proceeds from the Equity Offering were utilized as follows (in thousands):

<TABLE> <CAPTION> <S>	<C>
Net cash proceeds.....	\$ 99,705
Debt retirement - 13% Notes.....	(70,000)
Debt retirement - Senior Secured Credit Facility.....	(16,468)
Redemption premium on 13% Notes.....	(9,100)
Accrued interest on 13% Notes.....	(3,387)
Transaction expenses.....	(750)
	-----
	\$ --
	=====

</TABLE>

In March 2002 the Company used the proceeds from the common stock offering completed in the second quarter of fiscal 2002 to redeem \$70 million of the 13% Notes and pay down \$16.5 million of debt under the Senior Secured Credit Facility. In the third quarter of fiscal 2002, the Company refinanced a portion of the Senior Secured Credit Facility. In conjunction with the refinancing, all

outstanding tranche B institutional term loans were extinguished and the New Tranche A Term Loans were funded by existing bank lenders. The New Tranche A Term Loans, with a final maturity in June 2006, are currently priced at LIBOR plus 2.25%, and are subject to a pricing grid, which allows for further reductions in the borrowing spread.

The borrowings under the Senior Secured Credit Facility bear interest based on a variable pricing grid tied to the Company's total leverage, as measured by debt to trailing twelve-month EBITDA (earnings before interest, taxes, depreciation, and amortization). As a result of the debt retirement resulting from the Equity Offering, the borrowing "spread" above LIBOR declined in the fiscal third quarter. The spread on revolver borrowings was reduced from LIBOR plus 2.75% to LIBOR plus 2.50%.

For a summary of outstanding debt at May 31, 2002 and August 31, 2001, see Note 7, "Debt" in the accompanying financial statements.

Total debt outstanding at May 31, 2002 is payable as follows:

<TABLE>  
<CAPTION>

Years ended August 31,	<S>	<C>
2002.....	\$	3,027
2003.....		11,106
2004.....		17,581
2005.....		20,386
2006.....		59,067
Thereafter.....		128,638
		-----
Total.....	\$	239,805
		=====

</TABLE>

The Company leases certain facilities, computers, equipment, and vehicles under various operating lease agreements, generally over periods from 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. For a schedule of future minimum lease payments see Note 8, "Leases," in the financial statements contained in the Company's Annual Report on Form 10-K for the year ended August 31, 2001.

As discussed in Note 10 to the accompanying consolidated financial statements, "Discontinued Operations and Distribution of Electronics Segment," the Company is contingently liable for certain lease agreements held by APW. If APW were unable to fulfill its obligations under the leases, the Company could be liable for such leases. A future breach of the lease agreements by APW could potentially have a material adverse effect on the Company's results of operations and financial position.

As more fully discussed in Note 3 to the Condensed Consolidated Financial Statements, "Accounts Receivable Financing" the Company is party to an accounts receivable securitization arrangement. Trade receivables sold and being serviced by the Company were \$25.8 million and \$25.3 million at May 31, 2002 and August 31, 2001, respectively. If the Company were to discontinue this securitization program, at May 31, 2002 it would have been required to borrow approximately \$25.8 million to finance the working capital increase.

No dividend payments were declared or made during the first three quarters of fiscal 2002, nor does the Company expect to pay dividends in the foreseeable future. Cash flow will instead be retained for working capital needs, acquisitions, and to reduce outstanding debt. At May 31, 2002, the Company had \$84.5 million of availability under its

revolver. The Company's senior credit agreement contains customary limits and restrictions concerning investments, sales of assets, liens on assets, interest and fixed cost coverage ratios, maximum leverage, capital expenditures, acquisitions, excess cash flow, dividends, and other restricted payments. At May 31, 2002 the Company was in compliance with all debt covenants.

Since the Distribution on July 31, 2000, the Company has reduced its indebtedness from approximately \$451.0 million to approximately \$240.3 million as of May 31, 2002. This approximate \$211 million reduction was accomplished as follows:

<TABLE>  
<CAPTION>

<S>	<C>
Business divestiture, net of taxes and expenses.....	\$ 33

Proceeds from A/R securitization.....	25
Debt reduction from equity offering proceeds.....	86
Business acquisition.....	(13)
Free cash flow from operations and all other.....	80
	-----
	\$ 211
	=====

</TABLE>

The primary focus of the Company since the Distribution has been to reduce debt. Given the rapid deleveraging and the Company's desire to grow both internally and through acquisitions, the Company intends to continue to use available cash flow to reduce debt, unless attractive acquisitions surface and are completed. The Company believes that availability under its credit facilities, plus funds generated from operations, will be adequate to meet operating, debt service and capital expenditure requirements for at least the next twelve months.

#### Outlook

The Company has revised its estimates of its projected operating results for fiscal 2002 and has made those revised estimates available to the public in a press release. Accordingly, shareholders and others should no longer rely on the Company's prior estimates of projected operating results, including the estimates appearing in the Company's Annual Report on Form 10-K for its fiscal year ended August 31, 2001, because those prior estimates have been revised and superseded to reflect current operating and market conditions.

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#### Item 3 - Quantitative and Qualitative Disclosures about Market Risk

The Company is exposed to market risk from changes in foreign exchange and interest rates and, to a lesser extent, commodities. To reduce such risks, the Company selectively uses financial instruments. All hedging transactions are authorized and executed pursuant to clearly defined policies and procedures, which strictly prohibit the use of financial instruments for trading purposes.

A discussion of the Company's accounting policies for derivative financial instruments is included in the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2001 within Note 1 - "Summary of Significant Accounting Policies" in Notes to Consolidated Financial Statements.

**Currency Risk** - The Company has significant international operations. In most instances, the Company's products are produced at manufacturing facilities located near the customer. As a result, significant volumes of finished goods are manufactured in countries for sale into those markets. For goods purchased from other Company affiliates, the Company denominates the transaction in the functional currency of the producing operation.

The Company has adopted the following guidelines to manage its foreign exchange exposures:

- (i) increase the predictability of costs associated with goods whose purchase price is not denominated in the functional currency of the buyer;
- (ii) minimize the cost of hedging through the use of naturally offsetting positions (borrowing in local currency), netting, pooling; and
- (iii) where possible, sell product in the functional currency of the producing operation.

The Company's identifiable foreign exchange exposures result primarily from the anticipated purchase of product from affiliates and third-party suppliers along with the repayment of intercompany loans with foreign subsidiaries denominated in foreign currencies. The Company periodically identifies areas where it does not have naturally occurring offsetting positions and then purchases hedging instruments to protect against anticipated exposures. There are no such hedging instruments in place at May 31, 2002 or through the date of this filing. The Company's financial position is not materially sensitive to fluctuations in exchange rates as any gains or losses on foreign currency exposures are generally offset by gains and losses on underlying payables, receivables and net investments in foreign subsidiaries.

**Interest Rate Risk** - Given the Company's leverage, it is exposed to interest rate risk from changes in interest rates. The Company has periodically utilized

interest rate swap agreements historically to manage overall financing costs and interest rate risk. During the quarter ended May 31, 2001, the Company entered into a contract to swap variable interest rates on \$25 million of the senior credit facility for fixed interest rates. In the first quarter of fiscal 2002, the Company entered into a second contract to swap variable interest rates on \$25 million of the senior credit facility for fixed interest rates. The Company has no other such agreements in place at May 31, 2002 or through the date of this filing. The Company's Senior Credit Agreement stipulates that the lower of 50% of total debt or \$200.0 million be fixed interest rate obligations. The Company is in compliance with this requirement.

PART II - OTHER INFORMATION

Item 6 - Exhibits and Reports on Form 8-K

(a) Exhibits

See "Index to Exhibits" on page 30, which is incorporated herein by reference.

(b) Reports on Form 8-K

See "Index to Exhibits" on page 30, which is incorporated herein by reference.

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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.

ACTUANT CORPORATION  
(Registrant)

Date: July 15, 2002

By: /s/ Andrew G. Lampereur  
-----  
Andrew G. Lampereur  
Vice President and Chief Financial Officer

(Principal Financial Officer  
and duly authorized to sign  
on behalf of the registrant)

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ACTUANT CORPORATION

(the "Registrant")  
(Commission File No. 1-11288)

QUARTERLY REPORT ON FORM 10-Q  
FOR THE QUARTER ENDED MAY 31, 2002  
INDEX TO EXHIBITS

<TABLE>  
<CAPTION>

Exhibit	Description	Incorporated Herein By Reference To	Filed Herewith
<S>	<C>	<C>	<C>
4.12	Amended and Restated Credit Agreement dated as of May 22, 2002 among Actuant Corporation, the Lenders Named Therein, and Credit Suisse First Boston as Lead Arranger, Collateral Agent and Administrative Agent, Wachovia Bank, N.A. as Syndication Agent, and ING Capital LLC as Documentation Agent.		X
4.13	Amended and Restated Security Agreement by Actuant Corporation (formerly known as Applied Power Inc.), as Borrower, and the Subsidiary Guarantors Party hereto and the Subsidiary Pledgors Party hereto and Credit Suisse First Boston, as Collateral Agent, dated as of July 31, 2000 and Amended and Restated as of May 22, 2002.		X
4.14	Amended and Restated Indemnity, Subrogation and Contribution Agreement		X

dated as of May 22, 2002, among Actuant Corporation, a Wisconsin Corporation, each Guarantor Subsidiary of the Company, and Credit Suisse First Boston, as Collateral Agent for the Secured Parties.

4.15	Amended and Restated Subsidiary Guarantee Agreement dated as of May 22, 2002, among each of the Guarantor Subsidiaries of Actuant Corporation and Credit Suisse First Boston, as Collateral Agent for the Secured Parties.	X
10.34	Actuant Corporation Outside Directors' Deferred Compensation Plan.	Exhibit 99.1 to the Registrant's Form S-8 dated May 24, 2002.
10.35	Form 8-K dated May 23, 2002 was filed describing the impact of prepackaged bankruptcy cases filed by a former subsidiary of the Registrant.	Registrant's Form 8-K dated May 23, 2002.

</TABLE>

=====

AMENDED AND RESTATED CREDIT AGREEMENT

dated as of May 22, 2002

among

ACTUANT CORPORATION

THE LENDERS NAMED HEREIN

and

CREDIT SUISSE FIRST BOSTON,  
as Lead Arranger, Collateral Agent and Administrative Agent

-----

WACHOVIA BANK, NATIONAL ASSOCIATION

Syndication Agent

and

ING CAPITAL LLC

Documentation Agent

=====

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Exhibit C-2 Form of Notice of Conversion/Continuation  
Exhibit D Form of Indemnity, Subrogation and Contribution Agreement  
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Exhibit I Form of Opinion of Local Counsel  
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THIS AMENDED AND RESTATED CREDIT AGREEMENT dated as of May 22, 2002, among ACTUANT CORPORATION (formerly known as Applied Power Inc.), a Wisconsin 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, WACHOVIA BANK, NATIONAL ASSOCIATION, as syndication agent (in such capacity, the "Syndication Agent"), and ING CAPITAL LLC, as documentation agent (in such capacity, the "Documentation Agent").

The Borrower has requested the Lenders to extend credit in the form of (a) Tranche A Term Loans on the Amendment Closing Date, in an aggregate principal amount not in excess of \$85,000,000, and (b) 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. In addition the Borrower desires to have the ability to request an Additional Loan Commitment with respect to Tranche B Term Loans. The proceeds of the Tranche A Term Loans shall be used in part to repay the existing term loans under the Original Credit Agreement and the balance shall be used together with the Revolving Loans and the Swingline Loans 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.

"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.

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"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" shall mean a loan made pursuant to 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 Effective 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.

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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.

"Amendment Closing Date" shall have the meaning given such term in Section 9.03(a).

"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," "ABR Spread--Tranche A Term Loans and Revolving Loans" or "Unused Revolving Credit Commitment," as the case may be, based upon the Leverage Ratio as of the relevant date of determination:

<TABLE>  
<CAPTION>

Leverage Ratio	Eurocurrency Spread-- Tranche A Term Loans and Revolving Loans	ABR Spread-- Tranche A Term Loans and Revolving Loans	Unused Revolving Credit Commitment
Category 1 Equal to or greater than 4.25 to 1.00	3.00%	2.00%	0.50%

</TABLE>

-4-

Category 2 Equal to or greater than 3.50 to 1.00, but less than 4.25 to 1.00	2.75%	1.75%	0.50%
Category 3 Equal to or greater than 3.00 to 1.00, but less than 3.50 to 1.00	2.50%	1.50%	0.50%
Category 4 Equal to or greater than 2.50 to 1.00, but less than 3.00 to 1.00	2.25%	1.25%	0.375%
Category 5 Equal to or greater than 2.00 to 1.00, but less than 2.50 to 1.00	2.00%	1.00%	0.375%
Category 6 Equal to or greater than 1.75, but less than 2.00	1.75%	0.75%	0.375%
Category 7 Less than 1.75 to 1.00	1.50%	0.50%	0.25%

Each change in the Applicable Percentage resulting from a change in the Leverage Ratio shall be effective with respect to all Loans and Letters of Credit outstanding on and after the date of delivery to the Administrative Agent of the financial statements and certificates required by Section 5.04(a) or (b) and Section 5.04(c), respectively, indicating such change until the date immediately preceding the next date of delivery of such financial statements and certificates indicating another such change. Notwithstanding the foregoing, until such date as the Administrative Agent shall have received a compliance certificate as required in Section 4.02(d) for the fiscal quarter ending May 31, 2002, the Leverage Ratio shall be deemed to be in Category 3 for purposes of determining the Applicable Percentage; provided, however, that at any time during which the Borrower has failed to deliver the financial statements and certificates required by Section 5.04(a) or (b) and Section 5.04(c), respectively, the Leverage Ratio shall be deemed to be in Category 1 for purposes of determining the Applicable Percentage.

"Asset Sale" shall mean the sale, transfer or other disposition (by way of merger or otherwise) by the Borrower or any of the Subsidiaries to any person other than the Borrower or any Subsidiary Guarantor of (a) any capital stock of any of the Subsidiaries (other than directors' qualifying shares or shares required by applicable law to be held by a person other than the Borrower or a Subsidiary) or (b) any other assets of the Borrower or any of the Subsidiaries

(other than (i) inventory, excess, damaged, obsolete or worn out equipment, scrap and Cash Equivalents, in each case disposed of in the ordinary course of business and consistent with past practices, (ii) dispositions resulting in Net Insurance Proceeds or Net Condemnation Awards or (iii) dispositions between or among Foreign Subsidiaries), provided that any asset sale or series of related asset sales described in clause (b) above having a value not in excess of \$750,000 shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

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"Attributable Debt" in respect of a Sale and Lease-back Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Tranche A Term Loans on the Amendment Closing Date, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Lease-back Transaction (including any period for which such lease has been extended).

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" means the Board of Directors of the Borrower or any committee thereof authorized to act on behalf of such Board.

"Borrower" shall mean the Company and any person who becomes a Subsidiary Borrower pursuant to Section 2.24.

"Borrowing" shall mean a group of Loans of a single Type made by the Lenders on a single date and as to which a single Interest Period is in effect.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C-1, or such other form as shall be approved by the Administrative Agent.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York, or is a day on which banking institutions located in such jurisdiction are authorized or required by law or other governmental action to close; provided, however, that (i) when used in connection with a Eurocurrency Rate Loan, the interest rate for which is determined by reference to LIBOR, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in the relevant currency in the London interbank market, and (ii) when used in connection with a Eurocurrency Rate Loan, the interest rate for which is determined by reference 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.

"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

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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.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"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 Commitments.

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"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.

"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.

"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 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; provided, however, that the term "Consolidated Interest Expense" shall not include any non-cash interest expense, including without limitation debt issuance amortization expense and debt discount expense.

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"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; provided, however, that amounts in any such period in respect of (a) any non-cash charges associated with the sales of assets, businesses or product lines, (b) restructuring charges of \$1.7 million incurred in the third fiscal quarter of fiscal year 2001, (c) the charge of \$0.6 million incurred in the third fiscal quarter of year 2001 in connection with the Accounts Receivable Facility, (d) charges associated with the discontinuance or sale of any business operations, (e) the cumulative effect of accounting changes, and (f) charges associated with the early retirement or accelerated repayment of Indebtedness shall be added, without duplication, to Consolidated Net Income for such period.

"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.

"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 A Maturity Date, or (b) is converti-

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ble 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 A Maturity Date.

"Divestitures" shall mean the sale by the Borrower of its vibration control business, known as Barry Controls, which was consummated on June 30, 2000, and its aerospace cargo products business, known as Air Cargo, which was consummated on May 25, 2000.

"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 Original 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 Original 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.

"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

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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.ss. 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.ss. 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C.ss. 1251 et seq., the Clean Air Act of 1970, as amended 42 U.S.C.ss. 7401 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C.ss. 2601 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C.ss. 651 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.ss. 11001 et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C.ss. 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C.ss. 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.

"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

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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 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."

"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

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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, (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.

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"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 in the United States 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 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

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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 Amendment 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 determined 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 Revolving Credit

Maturity Date, the Tranche A Maturity Date or the Tranche B 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 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 B Term Loans shall extend beyond the Tranche B 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, unless the sum of (a) the aggregate princi

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pal 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 2.05(c).

"Judgment Currency" shall have the meaning assigned to such term in Section 9.16(b).

"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.

"Letter of Credit Fee Letter" shall mean the fee letter dated the Amendment Closing Date between the Borrower and the Administrative Agent.

"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 re

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cently 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.

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"Margin Stock" shall have the meaning assigned to such term in

"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.

"Mortgage Amendment" shall have the meaning assigned to such term in Section 4.02(g).

"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 which is subject to a Mortgage) and Schedule 1.01(a) (ii) (containing each parcel of leased Real Property which is subject to a Mortgage) which is 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.

"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.

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"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 New 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 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 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.

"Original Closing Date" means July 31, 2000, the date of the initial Credit Event under the Original Credit Agreement.

"Original Credit Agreement" has the meaning given such term in Section 9.03(a) hereof.

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

"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).

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"Permitted Liens" shall mean Liens as permitted to exist pursuant to 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 the Security Agreement delivered on the Amendment Closing Date or thereafter pursuant to Section 5.11.

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

"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 (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 or 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 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 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 the Revolving Credit

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Commitment or the Revolving Loans of any Lender or any Letters of Credit issued or participations therein purchased by any Lender or in any Swingline Loans, the percentage obtained by dividing (x) the Revolving Credit Exposure of that Lender by (y) the aggregate Revolving Credit Exposure of all Lenders, (iii) 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 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 Pro Rata Share of each Lender as of the Amendment Closing Date for purposes of each of clauses (i), (ii) and (iii) 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.

"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. ss. 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.

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"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.

"Sale and Lease-back Transaction" has the meaning given such term in Section 6.03.

"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.

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"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 which was consummated on July 30, 2000.

"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.

"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

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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.

"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 Loans" shall mean the Tranche A Term Loans and the Tranche B Term Loans (if outstanding).

"Term Loan Commitments" shall mean the Tranche A Commitments and the Additional Loan Commitments, if any.

"Term Loan Exposure" means, with respect to any Lender as of the date of determination (i) prior to the funding of the Term Loans, that Lender's Term Loan Commitment and (ii) after the funding of the Term Loans, the Dollar Equivalent of the outstanding principal amount of the Term Loan of that Lender.

"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.

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"Tranche A Commitments" 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 Tranche A 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 the Tranche A Term Loans, that Lender's Tranche A Commitment and (ii) after 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 a 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 Maturity Date" shall have the meaning assigned to such term in Section 2.25 hereof.

"Tranche B Term Loan" shall have the meaning assigned to such term in Section 2.25 hereof.

"Tranche B Term Loan Draw Date" means the date on which the Tranche B Term Loans are drawn by the Borrower.

"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 Additional Loan Commitment, if any, 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 Lenders" shall have the meaning assigned to such term in Section 2.25 hereof.

"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 Original Closing Date pursuant to the Transaction Documents, including (a) the consummation of the Spin-Off, (b) the consummation of the Divestitures, (c) the Original Credit Agreement and the initial borrowings thereunder, (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.

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"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.

"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 have 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 on 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.

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## 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 to the Borrower on the Amendment Closing Date in a principal amount not to exceed its Pro Rata Share of its Tranche A Commitment, and (b) to make Revolving Loans in Dollars to the Borrower, at any time and from time to time on or after the Original 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. Within the limits set forth in clause (b) 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; provided, it is understood and agreed that all amounts outstanding in respect of Revolving Loans shall be deemed to have been repaid (and reborrowed as requested by the Borrower) on the Amendment Closing Date (provided that Sections 2.08(c) and 2.16 shall not apply to such deemed repayment and reborrowing). 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) 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.

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(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 corresponding 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 deliver to the Administrative Agent a duly completed Borrowing Request by telephone (confirmed by teletype, email or other electronic transmission) (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 Term Borrowing or a Revolving Credit Borrowing, and whether such Borrowing is to be a Eurocurrency Rate Borrowing (and in the case of the Term Borrowing, whether the applicable rate shall be a EURIBOR Borrowing or LIBOR Borrowing)

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Borrowing, whether the applicable rate shall be a EURIBOR Borrowing or LIBOR Borrowing or an ABR Borrowing; (ii) in the case of a Term Borrowing on the Amendment 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.

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

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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. In addition, the Borrower agrees to pay or cause to be paid a one-time cash fee to each Lender party to this Agreement that executes and delivers a signature page to this Agreement on or prior to the Amendment Closing Date in the aggregate amount of 0.125% of such Lender's Revolving Credit Commitment. In addition to the foregoing, the Borrower agrees to pay a one-time cash fee to each Lender with a Tranche A Commitment on the Amendment Closing Date in the amount separately agreed to with each such Lender.

(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 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) On the Tranche B Term Loan Draw Date, the interest rate (and Applicable Percentage) applicable to the Tranche A Term Loans shall be reset to the greater of (i) the interest rate (and Applicable Percentage) applicable to the Tranche A Term Loans on the Tranche B Term Loan Draw Date and (ii) the interest rate (and Applicable Percentage) applicable to the Tranche B Term Loans, and all other Applicable Percentages for Tranche A 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.

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 Borrower 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 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

tive 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 Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by the Borrower.

(c) Indemnification for Breakage or Non-Commencement of Interest Periods. The Borrower 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 2.16, 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) Each Lender's Tranche A Commitment shall automatically terminate at 5:00 p.m., New York City time, on the Amendment Closing Date. The Revolving Credit Commitments, the Swingline Commitment and the L/C Commitment shall automatically terminate on the Revolving Credit Maturity Date.

(b) Upon at least three Business Days' prior irrevocable written or teletype 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 Tranche A Commitments or the Revolving Credit Commitments; provided, however, that (i) each partial reduction of the Tranche A 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 Tranche A 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 am., 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;

(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.

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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
----	-----
June 30, 2002	2.1750%
September 30, 2002	2.1750%
December 31, 2002	2.1750%
March 31, 2003	2.1750%
June 30, 2003	3.2500%
September 30, 2003	3.2500%
December 31, 2003	3.2500%
March 31, 2004	3.2500%
June 30, 2004	4.3500%
September 30, 2004	4.3500%

December 31, 2004	4.3500%
March 31, 2005	4.3500%
June 30, 2005	4.3500%
September 30, 2005	14.0000%
December 31, 2005	14.0000%
March 30, 2006	14.0000%
Tranche A Maturity Date	14.5500%

(ii) The Borrower shall pay to the Administrative Agent, for the account of the Lender, an amount of the Tranche B 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 B Term Loan Draw Date) aggregating 1.0% per year of the aggregate principal amount of Tranche B Term Loans outstanding on the Tranche B 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 B 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 B Term Loans set forth above shall be reduced on a pro rata basis in connection with any voluntary or mandatory prepayments of the Tranche B Term Loans in accordance with Section 2.12 or 2.13; provided, further, that the final installment specified above for the repayment by the Borrower of the Tranche B 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 B Term Loans.

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(b) To the extent not previously paid, all Tranche A Term Loans shall be due and payable on the Tranche A Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) 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 prior written or telecopy notice (or telephone notice promptly confirmed by written or telecopy notice) to the Administrative Agent before 11:00 a.m., New York City time, at least (x) seven Business Days prior to the date of prepayment in the case of Eurocurrency Rate Loans denominated on one or more Alternative Currencies, (y) four Business Days prior to the date of prepayment in the case of Loans denominated in Dollars, and (z) on the date of prepayment in the case of ABR Revolving Loans; 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); provided, further, however, that in connection with any optional prepayment of an Alternative Currency Loan the Borrower shall provide seven Business Days' notice and an amount of Dollars sufficient to make the required pro rata prepayment of Tranche A Term Loans and Tranche B Term Loans in accordance with Section 2.12(b). Notwithstanding anything else contained herein but subject to the second proviso above, in connection with any prepayment of Tranche A Term Loans, the Borrower may elect to prepay only Dollar denominated Tranche A Term Loans or Alternative Currency denominated Tranche A Term Loans (or any combination thereof) pursuant to Section 2.12(b) to the extent such Loans remain outstanding at such time but only in the event the Borrower provides for such prepayment in the appropriate currency.

(b) Optional prepayments of Term Loans shall first be allocated and applied pro rata to the next scheduled installment of principal due in respect of the Tranche A Term Loans and Tranche B Term Loans under Sections 2.11(a)(i) and (ii), respectively. Thereafter optional prepayments shall be allocated pro rata to the then outstanding Tranche A Term Loans and the Tranche B Term Loans (after giving effect to the prepayments applied with respect to the next scheduled installment provided for in the prior sentence) and applied pro rata to the remaining scheduled installments of principal due in respect thereof under Sections 2.11(a)(i) and (ii).

(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.

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(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 (x) \$10.0 million in Net Cash Proceeds of Asset Sales consummated after the Original Closing Date and (y) the Net Cash Proceeds of any Sale and Lease-back Transaction to the extent permitted by Section 6.03 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, 2002, 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 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(l) 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) Each mandatory prepayment shall be made by the Borrower in a combination of Dollars and the Alternative Currency (based upon the Exchange Rate) in proportion to the amounts to be repaid. The Administrative Agent shall determine the amount of such payment based on the Exchange Rate and shall convert the Dollars to the Alternative Currency at the direction of the Borrower. The Borrower shall pay to the Administrative Agent any shortfall as a result of such conversion.

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(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 and Tranche B Term Loans and applied pro rata against the remaining scheduled installments of principal due in respect of the Tranche A Term Loans and Tranche B Term Loans under Sections 2.11(a)(i) and (ii), respectively. 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 respect to such Loans has been exhausted. For purposes of this Agreement, the term "Prepayment Account" shall mean an account 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 amounts remaining after the Term Loans have been paid in full shall be applied to any outstanding ABR Revolving 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.

SECTION 2.14. Reserve Requirements; Change in Circumstances. (a) 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.

(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.

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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:

(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

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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 Tranche A Commitments or the Revolving Credit Commitments and each conversion of 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 Term Loans and Revolving Loans and participations in L/C Disbursements shall be proportionately less than the unpaid principal portion of the 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 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 Term Loans and Revolving Loans and L/C Exposure and participations in 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 Term Loans and Revolving Loans and L/C Exposure then outstanding as the principal amount of its 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 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) Subject to paragraph (c) hereof, 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

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York or as otherwise specified to be promptly distributed by the Administrative Agent as provided in Article VIII.

(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; provided, if such day is a day of the month after which no further Business Day occurs in such month, such payment shall be made on the next preceding Business Day.

(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.

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(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 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 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 Amendment 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; provided, it is understood and agreed that all amounts outstanding in respect of Swingline Loans shall be deemed to have been repaid (and reborrowed as requested by the Borrower) on the Amendment Closing Date.

(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.

(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; provided, it is understood and agreed that all outstanding Letters of Credit shall be deemed to have expired (and been reissued as requested by the Borrower) on the Amendment Closing 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 willful 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 willful 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, willful 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 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

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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, 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

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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 A 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. Any existing Lenders and any Additional Lenders which agree to provide Additional Loan Commitments are collectively referred to herein as the "Tranche B 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 Lender, setting forth the Additional Loan Commitments of such Tranche B 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 Lender, a "Tranche B Term Loan"). The Tranche B Term Loans shall have a final maturity no earlier than the Tranche A Term Loans (any such date, the "Tranche B Maturity Date") and none of the terms of the Tranche B Term Loans shall be more favorable to the Lenders thereof than the terms applicable to the Tranche A 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:

SECTION 3.01. Organization; Powers. The Borrower and each of the Subsidiaries (except as set forth on Schedule 3.01) (a) is duly organized, validly existing and in good standing or active status under the laws of the jurisdiction of its organization, (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

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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 Loan Documents, 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 Original 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, 2001, audited by and accompanied by the opinion of PricewaterhouseCoopers LLP, independent public accountants, and (y) as of and for the fiscal quarter ended February 28, 2002, 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 financial statements were prepared in accordance with GAAP applied on a consistent basis.

(b) The Borrower has heretofore delivered to the Lenders, projections for each fiscal year beginning with the fiscal year ending August 31, 2002 and through and including the fiscal year ending August 31, 2003. 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, 2001, except as otherwise described in the Borrower's filings with the United States Securities and Exchange Commission prior to the date hereto or as described in the Forms 8-K filed on May 10 and 17, 2002 by APW, Ltd.

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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 and marketable 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. 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 and, except for the following Real Properties which are not being occupied by the Borrower and/or a Subsidiary: (i) 12801 West Silver Spring Drive, Butler, Wisconsin, (ii) 13,000 West Silver Spring Drive, Butler, Wisconsin and (iii) 950 Green Valley Road, Beaver Dam, Wisconsin].

(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.

(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 except in connection with certain rights of first refusal to sublease additional space to certain sublessees with respect to Panda Communications with respect to Real Property at 13,000 West Silver Spring Drive, Butler, Wisconsin.

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 (subject to the personal liability that may be imposed on shareholders by Section 180.0622(2)(b) of the Wisconsin Business Corporation Law) 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 Amendment 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

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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 Original 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 any Subsidiary is (a) an "investment company" as defined

in, or subject to regulation under, the Investment 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 or reserved 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 as set forth on Schedule 3.14.

SECTION 3.15. No Material Misstatements. No 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 with the Original Credit Agreement (including its schedules and

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exhibits) or included therein or delivered pursuant thereto contained, contains or will contain any material misstatement of fact or omitted, omits 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

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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 Amendment 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 and except for that portion of the Pledged Collateral as to which control thereof is necessary for the perfection of the Collateral Agent's Lien thereon or with respect to which perfection of the Collateral Agent's Lien is governed by laws other than Article 9 of the UCC ), 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 this Agreement or 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

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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. It is understood that Mortgages on the Mortgaged Property (as listed on Schedules 1.01(a)(i) and 1.01(a)(ii) hereto as of the date hereof) have been recorded in the appropriate recording office.

SECTION 3.20. Labor Matters. As of the date hereof and the Amendment 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 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 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 Amendment 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 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. Contingent Obligations. All contingent obligations incurred in connection with the Spin-Off are in such amounts as are set forth on Schedule 6.01.

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#### 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.

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. Tranche A Term Loan Credit Event. On the Amendment 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 Amendment 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 as the Administrative Agent or the Collateral Agent shall reasonably request, and the Borrower hereby requests such counsel to deliver such opinions.

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(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 Amendment 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 Amendment 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 Amendment 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 Amendment 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.

(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 (to the extent not otherwise delivered on or after the Original Closing Date) or an amendment to an existing Mortgage that was delivered on or after the Original Closing Date to the extent required by the Collateral Agent in connection with the execution and delivery of this Agreement (each a "Mortgage Amendment") with respect to each Mortgaged Property and such Mortgages and Mortgage Amendments 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

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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.

(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, UCC-2, UCC-3 or UCC-4, 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, to the extent not otherwise delivered on or after the Original Closing Date, 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;

(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 Amendment Closing Date pursuant to Section 5.11 hereof;

(5) with respect to each Real Property to the extent not otherwise delivered on or after the Original Closing Date, 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;

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(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 to the extent not otherwise delivered on or after the Original Closing Date, a policy (or commitment to issue a policy) of title insurance issued by a Title Company or with respect to any Mortgage Amendment an endorsement to an existing policy of title insurance issued by a Title Company, in each case insuring (or committing to insure) the Lien of such Mortgage or Mortgage Amendment 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), (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 (z) 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, to the extent not otherwise delivered on or after the Original Closing Date, if required by the Title Company, sufficient to cause the Title Company to remove the survey and unrecorded easement 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, to the extent not otherwise delivered on or after the Original Closing Date, 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 Mortgage Amendments and issuance of the title insurance policies referred to in subparagraph (8) above, if any;

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(13) with respect to each Mortgaged Property, an Officer's Certificate substantially in the form of Exhibit K; and

(14) an officer's certificate of the Borrower dated the date hereof and delivered to the Collateral Agent with respect to certain of the Borrower's obligations under Section 5.11 hereof.

(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 Loans to be made on the Amendment Closing Date and the other transactions contemplated hereby, neither the Borrower nor any of the Subsidiaries shall have outstanding any Indebtedness or preferred stock except Indebtedness not otherwise prohibited by Section 6.01.

## 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,

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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 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

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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 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:

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(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;

(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, 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 expense 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 (it being understood that certain obligations with respect to the foregoing obligations shall be undertaken pursuant to the officer's certificate of the Borrower dated the date hereof and delivered to the Collateral Agent).

(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 Amendment Closing Date (it being understood that certain obligations with respect to the foregoing obligations shall be undertaken pursuant to the officer's certificate of the Borrower dated the date hereof and delivered to the Collateral Agent)). 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 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, 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 Amendment 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 Original 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 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 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 B 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 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 Original Closing Date;

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(c) Indebtedness of the Borrower pursuant to the New Senior Subordinated Notes issued after the Original 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;

(d) Indebtedness actually outstanding on the Original 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 (i) 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 clause (i) exceed \$5,000,000 at any time outstanding and (ii) any Sale and Lease-back Transactions the Attributable Debt of which shall not exceed

\$5,000,000;

(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 Original 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 \$75,000,000; provided, no such Indebtedness may be incurred when on a pro forma basis for such incurrence (x) the aggregate principal amount of all such Indebtedness outstanding would be greater than \$45,000,000 and (y) the Senior Leverage Ratio would

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be greater than 1.5:1.0; provided, further, 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 \$75,000,000 in the aggregate outstanding at any time; provided, no such Indebtedness shall be incurred at a time when, on a pro forma basis for any such incurrence, the Senior Leverage Ratio is greater than 2.0:1.0;

(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 \$10,000,000 in aggregate principal amount at any time outstanding; provided, the aggregate amount of Indebtedness under Sections 6.01(k) and (m) does not exceed \$80,000,000 at any one time;

(n) Contingent Obligations consisting of guarantees by the Borrower of Indebtedness of any Subsidiary up to an amount not to exceed \$5,000,000 in the aggregate; and

(o) Indebtedness in respect of interest rate swap agreements not constituting Interest Rate Protection Agreements or Other Hedging Obligations that are entered into by the Borrower solely to convert a fixed rate obligation to a floating rate obligation; provided, (i) any such agreement is entered into by the Borrower with the good faith belief that it is in the best interest of the Borrower and (ii) no more than 50% of the aggregate principal amount of the Borrower's Consolidated Indebtedness shall be effectively subject to a floating interest rate at the time such interest rate swap agreement is entered into.

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 Amendment Closing Date and set forth on Schedule 6.02 (including Liens set out on any applicable title insurance policy on the Original Closing Date); provided that (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not

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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;

(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 (i) 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 or (ii) upon assets of the Borrower and its Subsidiaries subject to an Accounts Receivable Facility incurred pursuant

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to Section 6.01(l) (provided, that the Lien encumbering the asset giving rise to the Accounts Receivable Facility does not encumber any other asset (other than the proceeds thereof) of the Borrower or any Subsidiary of the

Borrower);

(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 and (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);

(m) Liens placed upon assets of the Borrower or any of its Subsidiaries subject to Sale and Lease-back Transactions to the extent permitted by Section 6.03; provided that (i) such Liens only serve to secure the payment of Attributable Debt arising under such Sale and Lease-back Transaction and (ii) the Lien encumbering the asset giving rise to the Sale and Lease-back Transaction does not encumber any other asset (other than proceeds thereof) of the Borrower or any Subsidiary of the Borrower; provided that the aggregate outstanding principal amount of all Attributable Debt secured by Liens permitted by this paragraph (m) shall not at any time exceed \$5,000,000; and

(n) Liens not otherwise permitted by the foregoing paragraphs (a) through (m) 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 (any such transaction a "Sale and Lease-back Transaction") other than a Sale and Lease-back Transaction permitted under Section 6.01(f).

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

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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 Original 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 \$50,000,000; and

(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 \$50.0 million, (ii) the aggregate amount of the cash consideration for all such acquisitions does not exceed \$75.0 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 Original 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;

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(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, (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 the sum of (i) \$10,000,000 in any twelve months, not including the proceeds of the sale of assets listed on Schedule 2.13(b) and (iii) enter into one or more Sale and Lease-back Transactions permitted by Section 6.03;

(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 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:

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(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;

(c) the Borrower may consummate the Spin-Off; and

(d) 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 equivalents thereof or rights to purchase any of the foregoing issued in connection with the Borrower's directors compensation plan; provided that the aggregate amount of shares repurchased paid by the Borrower pursuant to this Section 6.06(d) (exclusive of amounts paid as described pursuant to Section 6.06(b)) shall not exceed \$750,000 in any fiscal year and shall not exceed a maximum of \$1,750,000 for all such repurchases made on or after the Original Closing Date.

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.

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SECTION 6.08. Capital Expenditures. (a) Make any Capital Expenditures, except the amount specified during the fiscal year set forth below:

Fiscal Year -----	Maximum Capital Expenditure -----
2002	\$14.5
2003	\$15.5
2004	\$16.0
2005	\$17.0
2006	\$17.5
2007	\$18.0
2008	\$19.0

(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 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 -----
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

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Period -----	Ratio -----
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 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 -----
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
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
-----	-----
3/01/2002 to 5/31/2002	4.25:1.00
6/01/2002 to 8/31/2002	4.25:1.00
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. Unless the Required Lenders shall otherwise consent in writing, (i) amend, waive or modify, or permit the amendment or modification of, any provision of existing In-

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debtedness 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 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 any payment in respect of the Loans and repayments by any Foreign Subsidiary of Indebtedness incurred by such Foreign Subsidiary from the net earnings of such Foreign Subsidiary and its subsidiaries pursuant to Section 6.01(k)), 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 Original 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 Original 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

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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.

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 Amendment 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

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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 Default 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 prior-

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ity (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 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

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Bank (for purposes of this Article VIII, the Administrative Agent and the Collateral Agent are referred to collectively 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 willful 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 shall be

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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 willful 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.

#### 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, email or other electronic transmission at such address as may be provided in writing, as follows:

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(a) if to the Borrower, to it at 6100 North Baker Road, Glendale, Wisconsin 53209, Attention of Andrew G. Lampereur (Telecopy No. (414) 247-5550) with a copy to Quarles & Brady LLP, 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/Termination. (a) This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent, and the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each Lender and all conditions to the funding of the Tranche A Term Loans shall have been met pursuant to Section 4.02 (the "Amendment Closing Date"), and thereafter this Agreement shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective permitted successors and assigns. On and after the Amendment Closing Date, (i) this Agreement shall amend and restate the Borrower's credit agreement dated July 31, 2000 (as amended prior to the Amendment Closing Date, the "Original Credit Agreement"), (ii) all loans under the Original Credit Agreement which are repaid (other than the Revolving Loans and Swingline Loans deemed to have been repaid on the Amendment Closing Date pursuant to Sections 2.01 and 2.22(a) respectively) on the Amendment Closing Date shall be terminated with no further obligation or rights of the Company or the lenders thereof with respect thereto



and to the extent not repaid in connection with the amendment and restatement of the Original Credit Agreement, all loans outstanding under the Original Credit Agreement shall continue as and constitute Loans for all purposes under this Agreement, (iii) all Letters of Credit that have not expired on or before the Amendment Closing Date (other than Letters of Credit deemed to have expired and been reissued on the Amendment Closing Date pursuant to Section 2.23(c)) (under and as defined in the Original Credit Agreement) shall continue as and constitute Letters of Credit for all purposes under this Agreement, (iv) all other Obligations of the Borrower under the Original Credit Agreement that have not been paid or satisfied as of the Amendment

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Closing Date shall become Obligations of the Borrower under this Agreement, (v) unless otherwise specifically replaced, amended or restated in connection with this Agreement all Schedules to the Original Credit Agreement shall be deemed to constitute Schedules to this Agreement (with the understanding that any reference to the Original Credit Agreement contained therein are deemed to refer to this Credit Agreement), (vi) to the extent not replaced, amended, restated or terminated in connection with the amendment and restatement of the Original Credit Agreement, the Liens granted pursuant to the Collateral Documents shall continue to secure the Obligations and (vii) the other Loan Documents shall remain in full force and effect.

(b) The term of this Agreement shall be effective until no Loans, L/C Commitments or any other amounts payable hereunder or under any of the other Loan Documents shall remain outstanding, no Letters of Credit shall be outstanding, no Other Hedging Agreement between the Borrower and a Lender or an Affiliate of a Lender shall remain outstanding and all of the Commitments hereunder shall have expired or been terminated.

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 (A) an assignment of any Term Loan Exposure or (B) an assignment of any Revolving Loan Exposure (with the prior written consent of the Issuing Bank and the Swingline Lender) to a Lender or an Affiliate or Related Fund of a Lender, (x) the Borrower and the Administrative Agent (and, in the case of any assignment of a Revolving Credit Exposure, 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, such fee may be waived at the discretion of the Administrative Agent 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).

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(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 Tranche A 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 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).

(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.

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(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 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 willful misconduct of such Indemnitee.

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(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.

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 de-

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crease 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 or Tranche B 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, or (v) 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 B Term Loans in accordance with Section 2.25 shall only require the consent of the Administrative Agent, the Tranche B 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

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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.

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.

ACTUANT CORPORATION

by /s/ Terence M. Braatz

-----  
Name: Terence M. Braatz  
Title: Treasurer

CREDIT SUISSE FIRST BOSTON, individually,  
and as Administrative Agent, Collateral  
Agent, Swingline Lender and an Issuing  
Bank

by /s/ Karl Studer

-----  
Name: Karl Studer  
Title: Director

by /s/ Mark Gleason

-----  
Name: Mark Gleason  
Title: Director

WACHOVIA BANK, NATIONAL ASSOCIATION,  
individually, and as Syndication  
Bank

by /s/ David K. Hall

Name: David K. Hall  
Title: Vice President

ING CAPITAL LLC, individually, and as  
Documentation Agent Bank

by /s/ Thomas I. Solfo

-----  
Name: Thomas I. Solfo  
Title: Vice President



=====

AMENDED AND RESTATED SECURITY AGREEMENT

By

ACTUANT CORPORATION  
(formerly known as Applied Power Inc.),

as Borrower

and

THE SUBSIDIARY GUARANTORS PARTY HERETO

and

THE SUBSIDIARY PLEDGORS PARTY HERETO

and

CREDIT SUISSE FIRST BOSTON,

as Collateral Agent

-----

Dated as of July 31, 2000  
and  
Amended and Restated as of May 22, 2002

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AMENDED AND RESTATED SECURITY AGREEMENT

AMENDED AND RESTATED SECURITY AGREEMENT (the "Agreement"), dated as of May 22, 2002, made by ACTUANT CORPORATION (formerly known as Applied Power Inc.), a Wisconsin corporation having an office at 6100 North Baker Road, Glendale, Wisconsin 53209 (the "Borrower"), and EACH OF THE SUBSIDIARY GUARANTORS LISTED AS SUBSIDIARY GUARANTORS ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (collectively, the "Subsidiary Guarantors"), and EACH OF THE OTHER SUBSIDIARIES LISTED AS SUBSIDIARY PLEDGORS ON THE SIGNATURE PAGES HERETO OR FROM TIME TO TIME PARTY HERETO BY EXECUTION OF A JOINDER AGREEMENT (collectively, the "Subsidiary Pledgors"), as pledgors, assignors and debtors (the Borrower, together with the Subsidiary Guarantors and the Subsidiary Pledgors, in such capacities and together with any successors in such capacities, the "Pledgors," and each, a "Pledgor"), 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 pledgee, assignee and secured party (CSFB, in such capacities and together with any successors in such capacities, the "Collateral Agent").

RECITALS:

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A. Pursuant to that certain credit agreement, dated as of July 31, 2000 (as amended by Amendment No. 1, dated as of April 9, 2001, and by Amendment No. 2, dated as of November 28, 2001, as so amended, modified and supplemented, the "Original Credit Agreement"), among the Borrower, the Lenders, CSFB, as swingline lender, and issuing bank and administrative agent, the Collateral Agent, First Union National Bank, as syndication agent, and ING Capital LLC, as documentation agent, the Lenders have agreed to make to or for the account of the Borrower certain Loans (as defined in the Original Credit Agreement) and to issue certain Letters of Credit (as defined in the Original Credit Agreement) for the account of the Borrower.

B. As of the date hereof the Original Credit Agreement is being amended and restated pursuant to that certain Amended and Restated Credit Agreement (as so amended and restated, and as further amended, modified, amended and restated or supplemented from time to time, the "Credit Agreement") among the Borrower, the Lenders, CSFB, as swingline lender, and issuing bank and administrative agent, the Collateral Agent, Wachovia Bank, National Association (successor in interest to First Union National Bank), as syndication agent, and ING 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.

C. It is contemplated that one or more of the Pledgors may enter into one or more agreements (collectively, the "Interest Rate Protection Agreements") with one or more of the

interest rates with respect to the Loans under the Original Credit Agreement and the Credit Agreement.

D. The Borrower owns, directly or through its Subsidiaries (as hereinafter defined), all of the issued and outstanding shares of each of the Subsidiary Guarantors and Subsidiary Pledgors.

E. Each Subsidiary Guarantor has, pursuant to a certain subsidiary guarantee agreement, dated as of July 31, 2000 and/or pursuant to a joinder agreement thereto, among other things, guaranteed (the "Subsidiary Guarantee") the obligations of the Borrower under the Original Credit Agreement, the Credit Agreement and the other Loan Documents (as hereinafter defined).

F. In connection with the execution and delivery of the Original Credit Agreement, the Pledgors executed and delivered to the Collateral Agent, for the benefit of the Secured Parties (as hereinafter defined), that certain security agreement, dated as of July 31, 2000 (the "Original Security Agreement"), to secure, among other things, payment and performance of all the Secured Obligations (as hereinafter defined).

G. Each Subsidiary Guarantor and Subsidiary Pledgor has received, and will continue to receive substantial benefits from the execution, delivery and performance of the Loan Documents and each is, therefore, willing to enter into this Agreement.

H. Each Pledgor is or will be the legal and/or beneficial owner of the Pledged Collateral (as hereinafter defined) to be pledged by it hereunder.

I. It is a condition precedent to and inducement to the Lenders to enter into the Credit Agreement that each Pledgor execute and deliver the applicable Loan Documents, including this Agreement.

J. The Pledgors desire to amend and restate the Original Security Agreement by the execution of this Agreement in order to, among other things, (i) reflect the execution and delivery of the Credit Agreement, (ii) include in the Pledged Collateral certain additional items of personal property not originally included in the grant of the Pledged Collateral in the Original Security Agreement, and (iii) continue and confirm the prior pledge, pursuant to the Original Security Agreement, of the Pledged Collateral (as defined in the Original Security Agreement) and the pledge by each Pledgor, pursuant to this Agreement, of the Pledged Collateral in favor of the Collateral Agent 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.

AGREEMENT:  
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NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgors and the Collateral Agent hereby agree as follows:

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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 Agreement shall have the following meanings:

"Accounts" shall mean, with respect to each Pledgor, collectively, (i) all "accounts," as such term is defined in the UCC, and (ii) all (A) margin accounts, futures positions, book debts and other forms of obligations and receivables now or hereafter owned or held by or payable to such Pledgor relating in any way to or arising from the sale, lease, license, assignment or other disposition of Goods or other property or the rendering of services by such Pledgor or any other party, including the right to payment of any interest or finance charge with respect thereto, together with all merchandise or other property represented by any of the accounts, (B) all such merchandise or other property that may be reclaimed or repossessed or returned to such Pledgor, (C) all of such Pledgor's rights as an unpaid vendor, including stoppage in transit, reclamation, replevin and sequestration, (D) Supporting Obligations, including, without limitation, all assets pledged, assigned, hypothecated or granted to, and all letters of credit, guarantee claims, Liens and security interests held by Pledgor to secure payment of any accounts and which are delivered for or on behalf of any account debtor, (E) all accessions to all of the foregoing described properties and interests in properties, (F) all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection with the foregoing and (G) all evidence of the filing of financing statements and other statements and the registration of other instruments in connection therewith and amendments thereto, notices to other creditors or secured parties and certificates from filing or other registration offices. Notwithstanding the foregoing, Accounts shall not include any Accounts or other

property which would constitute Pledged Collateral hereunder but which are pledged as collateral under any Accounts Receivable Facility during the period that such Accounts and other property are subject to the lien thereof; provided, however, that at such time as any such Accounts or other property pledged as collateral under any Accounts Receivable Facility shall no longer be subject to the lien thereof, any and all such Accounts and other property shall become Pledged Collateral hereunder and shall be subject to the Lien and security interest created by this Agreement without further action by any party other than actions required to perfect such security interest.

"Accounts Receivable Facility" shall have the meaning assigned to such term in the Credit Agreement.

"Additional Pledged Interests" shall mean, collectively, with respect to each Pledgor, (i) all options, warrants, rights, agreements, additional membership or partnership interests or other interests of whatever class of any issuer of Initial Pledged Interests or any interest in any such issuer, including, without limitation, all rights, privileges, authority and powers of such Pledgor relating to the equity or membership or partnership interests in any such issuer or under the Operative Agreement of any such issuer, from time to time acquired by such Pledgor in any manner and (ii) all the membership, partnership or other interests, as applicable, of each limited liability company, partnership or

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other entity (other than a corporation) hereafter acquired or formed by such Pledgor (which are and shall remain at all times until this Agreement terminates, certificated interests explicitly made a "security" subject to the provisions of Article 8 of the UCC) and all options, warrants, rights, agreements, additional membership or partnership interests or other interests of whatever class of such limited liability company, partnership or other entity, including, without limitation, all rights, privileges, authority and powers of such Pledgor relating to such equity or membership or partnership interests or under the Operative Agreement of such limited liability company, partnership or other entity, from time to time acquired by such Pledgor in any manner, in each case, including the certificates, instruments and agreements representing such additional interests and any and all interest of such Pledgor in the entries on the books of any Securities Intermediary pertaining to such additional interests.

"Additional Pledged Shares" shall mean, collectively, with respect to each Pledgor, (i) all options, warrants, rights, agreements, additional shares of capital stock of whatever class of any issuer of the Initial Pledged Shares or any interest in any such issuer, including, without limitation, all rights, privileges, authority and powers of such Pledgor relating to the additional shares issued by any such issuer under the Operative Agreement of any such issuer, from time to time acquired by such Pledgor in any manner and (ii) all the issued and outstanding shares of capital stock of each corporation hereafter acquired or formed by such Pledgor (which are and shall remain at all times until this Agreement terminates, certificated shares) and all options, warrants, rights, agreements or additional shares of capital stock of whatever class of such corporation, including, without limitation, all rights, privileges, authority and powers of such Pledgor relating to such shares or under the Operative Agreement of such corporation, from time to time acquired by such Pledgor in any manner, in each case, including the certificates representing such additional shares and any and all interest of such Pledgor in the entries on the books of any Securities Intermediary pertaining to such additional shares.

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

"Agreement" shall mean this Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof.

"Allocation Indebtedness" shall have the meaning assigned to such term in Section 12.20(i) hereof.

"Allocation Notice" shall have the meaning assigned to such term in Section 12.20(i) hereof.

"Bank Accounts" shall mean, collectively, (i) the L/C Sub-Account, the Lockboxes, the Collection Accounts and the Lockbox Concentration Account and all accounts and sub-accounts relating to any of the foregoing accounts and (ii) all cash, funds, checks, notes and any instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition.

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

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

"Capital Lease Obligations" shall have the meaning assigned to such term in the Credit Agreement.

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

"Charges" shall mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including claims for labor, materials, supplies and warehousing and other claims arising by operation of law) against, all or any portion of the Pledged Collateral.

"Chattel Paper" shall mean, collectively, with respect to each Pledgor, all "chattel paper," as such term is defined in the UCC (whether tangible or electronic).

"Collateral" shall have the meaning assigned to such term in Section 12.20(i) hereof.

"Collateral Account" shall mean a collateral account or sub-account established and maintained by the Collateral Agent (or a Lender that agrees to be a collateral sub-agent for the Collateral Agent) in its name as Collateral Agent for the Secured Parties in accordance with the provisions of Section 8.2 hereof and all funds from time to time on deposit in the Collateral Account including, without limitation, all Cash Equivalents and all certificates and instruments from time to time representing or evidencing such investments; all notes, certificates of deposit, checks and other instruments from time to time hereafter delivered to or otherwise possessed by the Collateral Agent for or on behalf of any Pledgor in substitution for, or in addition to, any or all of the Pledged Collateral; and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the items constituting Pledged Collateral.

"Collateral Agent" shall have the meaning assigned to such term in the Preamble hereof.

"Collection Account" shall have the meaning assigned to such term in Section 8.4(i) hereof.

"Collections" shall mean all cash, funds, checks, notes, instruments and any other form of remittance tendered by account debtors in payment of Accounts.

"Commercial Tort Claims" shall mean each "commercial tort claim," as such term is defined in the UCC, including, without limitation, those claims listed in Schedule 1.1(j) annexed hereto.

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

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"Commodity Account" shall mean "commodity account," as such term is defined in the UCC.

"Commodity Contract" shall mean "commodity contract," as such term is defined in the UCC.

"Commodity Intermediary" shall mean "commodity intermediary," as such term is defined in the UCC.

"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 4.18 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 Agreement, 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, with respect to each Pledgor, all "contracts," as such term is defined in the UCC, of such Pledgor, and in any event, shall include, without limitation, all sale, service, performance and equipment or property lease contracts, agreements and grants (whether written or oral, or third party or intercompany), and any other documents (whether written or oral) between such Pledgor and third parties, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

"Control Agreement" shall mean an agreement substantially in the form annexed hereto as Exhibit 4 or Exhibit 5 or such other agreement in form and substance acceptable to Collateral Agent.

"Copyrights" shall mean, collectively, with respect to each Pledgor, all works of authorship and copyrights owned by or assigned to and all copyright registrations and applications made by such Pledgor (whether statutory or common law and whether established or registered in the United States or any other country) including, without limitation, the copyrights, registrations and applications listed in Schedule 1.1(a) annexed hereto, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of any copyrights, (ii) reissues, renewals, continuations and extensions thereof, (iii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world, including, without limitation, all moral rights related thereto, and (v) rights to sue for past, present and future infringements thereof.

"Cost of Construction" shall mean the sum, so far as it relates to the reconstructing, renewing, restoring or replacing of the Equipment and Inventory subject to any Destruction or Taking to, or with identical Equipment or Inventory or its functional equivalent having, at least the approximate equal value and utility for its intended purpose as the Equipment or Inventory was immediately prior to such Destruction or Taking, of (i) the costs and expenses incurred to acquire all materials,

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supplies, parts, units and other components necessary so to renew, restore or replace (ii) obligations incurred, assumed or undertaken by any Pledgor for labor, materials and other expenses and to contractors, builders and materialmen, (iii) the cost of contract bonds and of insurance of every kind, nature or character that may reasonably be deemed by any Pledgor to be necessary or appropriate during the course of construction and (iv) the expenses incurred or assumed by any Pledgor for estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or necessary for proper construction.

"Credit Agreement" shall have the meaning assigned to such term in Recital B hereof.

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

"Default Rate" shall mean the rate per annum equal to the highest rate then payable under the Credit Agreement.

"Deposit Account" shall mean "deposit account," as such term is defined in the UCC.

"Designated Accounts" shall mean, collectively, with respect to each Pledgor, (i) the Deposit Accounts, Securities Accounts and Commodity Accounts listed in Schedule 1.1(b) maintained by such Pledgor with a Qualified Intermediary pursuant to a Control Agreement and (ii) such other Deposit Accounts, Securities Accounts and Commodity Accounts opened after the date hereof and maintained by such Pledgor with a Qualified Intermediary pursuant to a Control Agreement.

"Destruction" shall mean any and all damage to, or loss or destruction of, all or any portion of the Pledged Collateral or Mortgaged Property.

"Distributions" shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

"Documents" shall mean, collectively, with respect to each Pledgor, all "documents," as such term is defined in the UCC, of such Pledgor, and in any event, shall include, without limitation, all receipts of such Pledgor covering, evidencing or representing Inventory or Equipment.

"Electronic Chattel Paper" shall mean "electronic chattelpaper," as such term is defined in the UCC.

"Engineer's Certificate" shall have the meaning assigned to such term in Section 4.17(vii) (C) (ii) hereof.

"Entitlement Order" shall mean "entitlement order," as such term is defined in the UCC.



"Equipment" shall mean, collectively, with respect to each Pledgor, all "equipment," as such term is defined in the UCC, and, in any event shall include, without limitation, all machinery, apparatus, equipment, office machinery, electronic data-processing equipment, computers and computer hardware and software (whether owned or licensed), furniture, conveyors, tools, materials, storage and handling equipment, automotive equipment, motor vehicles, tractors, trailers and other like property, whether or not the title thereto is governed by a certificate of title or ownership, and all other equipment of every kind and nature owned by such Pledgor or in which such Pledgor may have any interest (to the extent of such interest) and all modifications, renewals, improvements, alterations, repairs, substitutions, attachments, additions, accessions and other property now or hereafter affixed thereto or used in connection therewith, all replacements and all parts therefor and together with all substitutes for any of the foregoing.

"Estimate" shall have the meaning assigned to such term in Section 4.17(vii)(C)(ii) hereof.

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

"Financial Asset" shall mean, collectively, with respect to each Pledgor, all "financial assets," as such term is defined in the UCC.

"Full Replacement Cost" shall mean the Cost of Construction to replace the General Collateral, exclusive of depreciation.

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

"General Collateral" shall mean the Pledged Collateral other than the Securities Collateral, the Investment Property and the Intellectual Property Collateral.

"General Intangibles" shall mean, collectively, with respect to each Pledgor, all "general intangibles," as such term is defined in the UCC, of such Pledgor and, in any event shall include, without limitation, (i) all of such Pledgor's rights, title and interest in, to and under all Contracts and Insurance Policies and Pension Plan Reversions, (ii) all know-how and warranties relating to any of the Pledged Collateral or the Mortgaged Property, (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other Person and the benefits of any and all collateral or other security given by any other Person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral or any of the Mortgaged Property, (v) all lists, books, records, correspondence, ledgers, print-outs, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral or any of the Mortgaged Property including, without limitation, all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like pertaining to the operations of such Pledgor or any of the Pledged Collateral or any of the Mortgaged Property, field repair data, sales data and other

information relating to sales of products now or hereafter manufactured, distributed or franchised by such Pledgor, accounting information pertaining to such Pledgor's operations or any of the Pledged Collateral or any of the Mortgaged Property and all media in which or on which any of the information or knowledge or data or records relating to such operations or any of the Pledged Collateral or any of the Mortgaged Property may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, of any Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held by such Pledgor pertaining to operations now or hereafter conducted by such Pledgor or any of the Pledged Collateral or any of the Mortgaged Property including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation, (vii) all rights to reserves, deferred payments, deposits, refund, indemnification or claims to the extent the foregoing relate to any Pledged Collateral or any of the Mortgaged Property and claims for tax or other refunds against any Governmental Authority relating to any Pledged Collateral or any of the Mortgaged Property, and (viii) all "payment intangibles," as such term is defined in the UCC.

"Goods" shall mean all "goods," as such term is defined in the UCC, wherever located, including, without limitation, any fixtures located on any real property.

"Goodwill" shall mean, collectively, with respect to each Pledgor, the entire goodwill connected with such Pledgor's business and, in any event shall include, without limitation, (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property Collateral in which such Pledgor has any interest, (ii) all know-how, trade secrets, customer lists, proprietary information, inventions, methods, procedures, formulae, descriptions, name plates, catalogs, confidential information, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Pledgor's business.

"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 any Pledgor or the Pledged Collateral or any portion thereof.

"Indemnified Liabilities" shall have the meaning assigned to such term in Section 12.4(i) hereof.

"Indemnitees" shall have the meaning assigned to such term in Section 12.4(i) hereof.

"Initial Pledged Interests" shall mean, with respect to each Pledgor, all membership interests and/or partnership interests, as applicable, of each issuer described in Schedule 1.1(c) annexed hereto that is a partnership, limited liability company or other entity (other than a corporation) (which are and shall remain at all times until this Agreement terminates, certificated interests explicitly made a "security" subject to the provisions of Article 8 of the UCC) together with all rights, privi-

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leges, authority and powers of such Pledgor in and to each such issuer or under the Operative Agreement of each such issuer, and the certificates, instruments and agreements representing such membership or partnership interests and any and all interest of such Pledgor in the entries on the books of any Securities Intermediary pertaining to such membership or partnership interests.

"Initial Pledged Shares" shall mean, collectively, with respect to each Pledgor, the issued and outstanding shares of capital stock of each Person described in Schedule 1.1(d) annexed hereto that is a corporation (which are and shall remain at all times until this Agreement terminates, certificated shares) together with all rights, privileges, authority and powers of such Pledgor in and to each such issuer or under the Operative Agreement of each such issuer, and the certificates, instruments and agreements representing the Initial Pledged Shares and any and all interest of such Pledgor in the entries on the books of any Securities Intermediary pertaining to the Initial Pledged Shares.

"Instruments" shall mean, collectively, with respect to each Pledgor, all "instruments," as such term is defined in the UCC, and, in any event, shall include, without limitation, all promissory notes, drafts, bills of exchange or acceptances.

"Insurance Certificate" shall mean a certificate evidencing the Required Insurance Policies (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 advance notice to additional interest parties of termination and notification 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 Section 4.17 hereof.

"Insurance Policies" shall mean, collectively, with respect to each Pledgor, all insurance policies held by such Pledgor or naming such Pledgor as insured, additional insured or loss payee (including, without limitation, the Required Insurance Policies), all such insurance policies entered into after the date hereof, other than insurance policies (or certificates of insurance evidencing such insurance policies) relating to health and welfare insurance and life insurance policies in which such Pledgor is not named as beneficiary (i.e., insurance policies that are not "Key Man" insurance policies) and all rights, claims and recoveries relating thereto (including, without limitation, all dividends, returned premiums and other rights to receive money in respect of any of the foregoing).

"Insurance Requirements" means, collectively, with respect to each Pledgor,

all provisions of the Required Insurance Policies, all requirements of the issuer of any of the Required 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 such Pledgor and applicable to the Pledged Collateral or any use or condition thereof.

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses and Goodwill.

"Intercompany Notes" shall mean, with respect to each Pledgor, all intercompany notes described in Schedule 1.1(e) annexed hereto (and each other intercompany note hereafter ac-

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quired by such Pledgor) and all certificates, instruments or agreements evidencing such intercompany notes and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

"Interest Rate Protection Agreements" shall have the meaning assigned to such term in Recital C hereof.

"Inventory" shall mean, collectively, with respect to each Pledgor, all "inventory," as such term is defined in the UCC, of such Pledgor wherever located and of every class, kind and description and, in any event shall include, without limitation, (i) all goods consisting of inventory for sale or lease or to be furnished under contracts for service, merchandise, raw materials, work-in-process, returned goods, finished goods, samples and consigned goods (to the extent of the consignee's interest therein), materials and supplies of any kind or nature which are or might be used in connection with the manufacture, printing, publication, packing, shipping, advertising, selling or finishing of any such goods and all other products, goods, materials and supplies, (ii) all inventory as is temporarily out of such Pledgor's custody or possession, items in transit and any returns and repossessions upon any Accounts and (iii) all substitutions therefor or replacements thereof, and all additions and accessions thereto.

"Investment Property" shall mean, collectively, with respect to each Pledgor, all "investment property," as such term is used in the UCC, of such Pledgor and, in any event shall include, without limitation, (i) all Securities Accounts and Commodity Accounts including, without limitation all Designated Accounts, (ii) (A) all Financial Assets, cash, checks, drafts, securities and instruments deposited or held or required to be deposited or held in such Pledgor's Securities Accounts and all Security Entitlements relating thereto and (B) all Commodity Contracts, cash, checks, drafts, securities and instruments deposited or held or required to be deposited or held in such Pledgor's Commodity Accounts, (iii) all investments and all certificates and instruments, if any, from time to time representing or evidencing any other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing items listed in clauses (i) and (ii) of this definition and (iv) each consent, control or other agreement including, without limitation, each Control Agreement, entered into by such Pledgor with any Security Intermediary or Commodity Intermediary with which any Securities Account or Commodity Account is maintained and all rights, if any, and interests of such Pledgor in, to and under each such consent, control or other agreement; provided, however, that Investment Property shall in no event include the Securities Collateral.

"Joinder Agreement" shall mean the form of joinder agreement attached hereto as Exhibit 3.

"L/C Sub-Account" shall have the meaning assigned to such term in Section 8.3 hereof.

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

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"Letter-of-Credit Rights" shall mean, collectively, with respect to each Pledgor, each "letter-of-credit" and all "letter-of-credit rights," as each such term is defined in the UCC, whether or not such letter of credit is evidenced by a writing.

"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 clause (B) and, to the extent applicable, clauses (E) and (F) of Section 4.17(i) hereof.

"Licenses" shall mean, collectively, with respect to each Pledgor, all license and distribution agreements and covenants not to sue with any other party with respect to any Patent, Trademark, or Copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement including, without limitation, the license and distribution agreements listed in Schedule 1.1(f) annexed hereto, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) any other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights.

"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.

"Lockbox Agreement" shall mean each Lockbox Agreement substantially in the form of Exhibit 6 annexed hereto, entered into in connection with this Agreement, in each case, with such changes as the Collateral Agent may, in its sole discretion, approve.

"Lockbox Bank" shall have the meaning assigned to such term in Section 8.4(i) hereof.

"Lockbox Concentration Account" shall have the meaning assigned to such term in Section 8.4(ii) hereof.

"Lockboxes" shall have the meaning assigned to such term in Section 8.4(i) hereof.

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

"Material Adverse Effect" shall mean (i) a materially adverse effect on the business, Pledged Collateral, results of operations, prospects or condition, financial or otherwise, of the Bor-

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rower and the Subsidiaries, taken as a whole, (ii) any material impairment of the ability of any Pledgor to perform any of its obligations under this Agreement or (iii) any material impairment of the rights of or benefits or remedies available to the Collateral Agent under this Agreement including, without limitation, any material impairment of the value or use of the Pledged Collateral or the Lien created by this Agreement.

"Mortgaged Property" shall have the meaning assigned to such term in each of the Mortgages.

"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.

"Officers' Certificate" shall mean, as applied to any corporation (or limited liability company or partnership), a certificate executed on behalf of such corporation (or limited liability company or partnership) 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, in the case of a limited liability company, its managing member if no such equivalent officer has been so appointed or, in the case of a partnership, its general partner) and by its Chief Financial Officer, Vice President-Finance or its Treasurer (or an equivalent officer or, in the case of a limited liability company, its managing member if no such equivalent officer has been so appointed or, in the case of a partnership, its general partner) 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.

"Operative Agreement" shall mean (i) in the case of any limited liability company, partnership or other non-corporate entity, any membership, partnership or other organizational document or agreement thereof and (ii) in the case of any corporation, any charter or certificate of incorporation and by-laws thereof.

"Original Credit Agreement" shall have the meaning assigned to such term in Recital A hereof.

"Original Security Agreement" shall have the meaning assigned to such term in Recital F hereof.

"Patents" shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to and all patent applications and registrations made by such Pledgor (whether established or

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registered or recorded in the United States or any other country) including, without limitation, the patents, patent applications, registrations and recordings listed in Schedules 1.1(g)(1) and 1.1(g)(2) annexed hereto, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (iv) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present and future infringements thereof.

"Pension Plan Reversions" shall mean, with respect to each Pledgor, such Pledgor's right to receive the surplus funds, if any, which are payable to such Pledgor following the termination of any employee pension plan and the satisfaction of all liabilities of participants and beneficiaries under such plan in accordance with applicable law.

"Permitted Collateral Liens" shall have the meaning assigned to such term in Section 4.4 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 4.17 (vii)(C)(i) hereof.

"Pledge Amendment" shall have the meaning assigned to such term in Section 6.1 hereof.

"Pledged Collateral" shall have the meaning assigned to such term in Section 2.1 hereof.

"Pledged Interests" shall mean, collectively, the Initial Pledged Interests and the Additional Pledged Interests; provided, however, that to the extent applicable, such Pledgor shall not be required to pledge any interest possessing more than 65% of the voting power or control of all classes of interests entitled to vote of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Tax Code) and, in any event, shall not be required to pledge the interests of any Subsidiary otherwise required to be pledged pursuant to this Agreement to the extent that such pledge would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Tax Code, which investment would trigger an increase in the gross income of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Tax Code; provided, further, that each Pledgor shall not be required to pledge the interests of any Subsidiary which is a first-tier controlled foreign entity until such time as such first-tier controlled foreign entity has annual sales in any four fiscal quarters or assets having a fair market value in excess of \$5,000,000 (as reasonably determined by the Collateral Agent).

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"Pledged Securities" shall mean, collectively, the Pledged Interests, the Pledged Shares and the Successor Interests.

"Pledged Shares" shall mean, collectively, the Initial Pledged Shares and the Additional Pledged Shares; provided, however, that each Pledgor shall not be required to pledge shares possessing more than 65% of the voting power of all classes of capital stock entitled to vote of any Subsidiary which is a first tier controlled foreign corporation (as defined in Section 957(a) of the Tax Code) and, in any event, shall not be required to pledge the shares of stock of any Subsidiary otherwise required to be pledged pursuant to this Agreement to the extent that such pledge would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Tax Code, which investment would trigger an increase in the gross income of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Tax Code; provided, further, that each Pledgor shall not be required to pledge the shares of (i) any Subsidiary which is a first-tier controlled foreign corporation (other than Applied Power Holding GmbH), until such time as such first-tier controlled foreign corporation has annual sales in any four consecutive fiscal quarters or assets having a fair market value in excess of \$5,000,000 (as reasonably determined by the Collateral Agent), or (ii) Applied Power Holding GmbH, until such time as Applied Power Holding GmbH has annual sales in any four consecutive fiscal quarters in excess of \$12,000,000 or assets having a fair market value in excess of \$5,000,000 (each as reasonably determined by the Collateral Agent).

"Pledgor" shall have the meaning assigned to such term in the Preamble hereof.

"Prior Liens" shall mean, collectively, (i) the Liens identified in Schedule 1.1(h) annexed to this Agreement relating to the items of Pledged Collateral identified in such Schedule and (ii) the Liens identified on Schedule B to each of the Mortgages.

"Proceeds" shall mean, collectively, all "proceeds," as such term is defined in the UCC or under other relevant law, and in any event shall include, without limitation, any and all (i) proceeds of the conversion, voluntary or involuntary, of the Pledged Collateral 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 Agreement), indemnity, warranty, guaranty or claim payable to the Collateral Agent or to such Pledgor from time to time with respect to any of the Pledged Collateral including, without limitation, proceeds in respect of any and all Required Insurance Policies, (iii) payments (in any form whatsoever) made or due and payable to such Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any portion of the Pledged Collateral by any Governmental Authority (or any Person acting on behalf of a Governmental Authority), (iv) products of the Pledged Collateral and (v) other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral.

"Property Insurance" shall mean, collectively, the insurance policies and coverages described in clauses (A), (C) and (D) and, to the extent applicable, clause (F) of Section 4.17(i) hereof.

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"Prudent Operator" shall mean the standard of care taken by a prudent operator of property and assets similar in use and configuration to the Pledged Collateral and located in the locality where the Pledged Collateral is located.

"Purchase Money Lien" shall mean Liens of the kind and nature permitted under Section 6.02(e) of the Credit Agreement other than Liens relating to Capital Lease Obligations.

"Qualified Commodity Intermediary" shall mean a Commodity Intermediary that has executed and delivered to the Collateral Agent a Control Agreement in accordance with the provisions hereof.

"Qualified Intermediary" shall mean a Qualified Securities Intermediary or a Qualified Commodity Intermediary, as the case may be.

"Qualified Securities Intermediary" shall mean a Securities Intermediary that has executed and delivered to the Collateral Agent a Control Agreement in accordance with the provisions hereof.

"Required Insurance Policies" means, collectively, with respect to each Pledgor, the insurance policies and coverages maintained by such Pledgor with respect to the Pledged Collateral pursuant to Section 4.17 hereof and all renewals and extensions thereof.

"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.

"Restoration" shall have the meaning assigned to such term in Section 4.17(vii)(B) hereof.

"Restoration Commitment" shall have the meaning assigned to such term in Section 4.17(vii)(C)(iii) hereof.

"Restoration Election Notice" shall have the meaning assigned to such term in Section 4.17(vii)(B) hereof.

"Restoration Letter of Credit" shall have the meaning assigned to such term in Section 4.17(vii)(C)(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 Agreement, 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

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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 J hereof.

"Securities Account" shall mean, with respect to each Pledgor, each "securities account," as such term is defined in the UCC, established or maintained for or on behalf of such Pledgor.

"Securities Act" shall have the meaning assigned to such term in Section 10.4(ii) hereof.

"Securities Collateral" shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

"Securities Intermediary" shall mean "securities intermediary," as such term is defined in the UCC.

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

"Security Entitlement" shall mean, with respect to each Pledgor, each "security entitlement," as such term is defined in the UCC, of such Pledgor and in any event shall include, without limitation, the rights and property interests of such Pledgor with respect to any and all Financial Assets.

"Spin-Off and Divestiture Document Rights" shall mean, with respect to each Pledgor, collectively, all of such Pledgor's rights, title and interest in, to and under the Spin-Off and Divestiture Documents including, without limitation, (i) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of the Spin-Off and Divestiture Documents, (ii) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for monetary damages under or in respect of the agreements, documents and instruments referred to in the Spin-Off and Divestiture Documents or related thereto and (iii) all proceeds, collections, recoveries and rights of subrogation with respect to the foregoing.

"Spin-Off and Divestiture Documents" shall mean, collectively, (i) that certain general assignment, assumption and agreement regarding litigation, claims and other liabilities, dated on or about July 31, 2000, among the Borrower and APW LTD., (ii) that certain transitional trademark use and license agreement, dated on or about July 31, 2000, among the Borrower and APW LTD., (iii) that certain

insurance matters agreement, dated on or about July 31, 2000, among the Borrower and APW LTD., (iv) that certain employee benefits and compensation agreement, dated on or about July 31, 2000, among the Borrower and APW LTD., and (v) and that certain tax sharing and indemnification agreement, dated on or about July 31, 2000, among the Borrower and APW LTD., in each case, as amended, amended and restated, supplemented, extended, renewed, replaced or otherwise modified from time to time.

"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 E hereof.

"Subsidiary Guarantors" shall have the meaning assigned to such term in the Preamble hereof.

"Subsidiary Pledgors" shall have the meaning assigned to such term in the Preamble hereof.

"Successor Interests" shall mean, collectively, with respect to each Pledgor, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other equity interest owned by such Pledgor (unless such successor is such Pledgor itself) formed by or resulting from any consolidation or merger in which any Person listed in Schedule 1.1(c) or Schedule 1.1(d) annexed hereto is not the surviving entity; provided, that the pledge of the Successor Interests affected hereby shall in no event affect the obligations of such Pledgor under any provision prohibiting such action hereunder or under the Credit Agreement; provided, however, that each Pledgor shall not be required to pledge shares or interests possessing more than 65% of the voting power or control of all classes of capital stock or interests entitled to vote of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Tax Code) and, in any event, shall not be required to pledge the shares of stock or interests of any Subsidiary otherwise required to be pledged pursuant to this Agreement to the extent that such pledge would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Tax Code, which investment would trigger an increase in the gross income of a United States shareholder of such Pledgor pursuant to Section 951 (or a successor provision) of the Tax Code; provided, further, that each Pledgor shall not be required to pledge the shares or interests of any Subsidiary which is a first-tier controlled foreign corporation until such time as such first-tier controlled foreign corporation has annual sales in any four fiscal quarters or assets having a fair market value in excess of \$5,000,000 (as reasonably determined by the Collateral Agent).

"Supporting Obligation" shall mean "supporting obligation," as such term is defined in the UCC.

"Taking" shall mean any taking of the Pledged Collateral or Mortgaged Property or any portion 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 of the Pledged Collateral or Mortgaged Property or any portion thereof, by any Governmental Authority, civil or military.

"Tangible Chattel Paper" shall mean "tangible chattel paper," as such term is defined in the UCC.

"Tax Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder.

"Trademarks" shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), logos, Federal, state and foreign trademark registrations and applications made by such Pledgor, common law trademarks and trade names owned by or assigned to such Pledgor and all registrations and applications for the foregoing, including, without limitation, the registrations and applications listed in Schedules 1.1(i)(1) and 1.1(i)(2) annexed hereto, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

"UCC" shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; 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 Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "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 Agreement, 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 Agreement in its entirety, (viii) unless otherwise expressly indicated, 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 Agreement, 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 construction of any provisions hereof and (xi)

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all obligations of each Pledgor hereunder shall be satisfied by each Pledgor at each Pledgor's sole cost and expense.

SECTION 1.3 Resolution of Drafting Ambiguities. Each Pledgor 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., the Collateral Agent) shall not be employed in the interpretation hereof.

## ARTICLE II

### GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1 Pledge. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges, assigns, transfers and grants to the Collateral Agent for its benefit and for the benefit of the Secured Parties, a security interest in and to and pledge of all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, the "Pledged Collateral"):

- (i) Accounts;
- (ii) Bank Accounts;
- (iii) Chattel Paper;
- (iv) Collateral Account;
- (v) Commercial Tort Claims;
- (vi) Deposit Accounts;
- (viii) Distributions;
- (viii) Documents;
- (ix) Equipment;
- (x) General Intangibles;
- (ixi) Goods;
- (xi) Instruments;

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- (xii) Intellectual Property Collateral;
  - (xiv) Intercompany Notes;
  - (xv) Inventory;
  - (xiii) Investment Property;
  - (xiiii) Letter-of-Credit Rights;
  - (xivi) Pledged Securities;
  - (xix) Spin-Off and Divestiture Document Rights;
  - (xx) Supporting Obligations relating to any and all of the foregoing;
- and

(xvi) to the extent not covered by clauses (i) through (xx) of this sentence, all Proceeds of any and all of the foregoing.

Notwithstanding the foregoing provisions of this Section 2.1, the Pledged Collateral shall not include (i) any property or asset now existing or hereafter acquired by such Pledgor which is subject to a Purchase Money Lien or Capital Lease Obligations; provided, however, that at such time as such property or asset is no longer subject to such Purchase Money Lien or Capital Lease Obligations, such property or asset shall (without any act or delivery by any Person) constitute Pledged Collateral hereunder, (ii) General Intangibles, Intellectual Property Collateral or Instruments arising under Contracts or under agreements or Instruments that expressly by their terms or by operation of law prohibit assignment of such rights without the prior written consent of the other parties thereto (but does not exclude such General Intangibles, Intellectual Property Collateral or Instruments to the extent that any such prohibition would be rendered ineffective pursuant to Section 9-406 or 9-408 of the UCC (or any successor provision or provisions) of any jurisdiction or any other applicable law or principle of equity) and (iii) any Accounts or other property which would constitute Pledged Collateral hereunder but which are pledged as collateral under any Accounts Receivable Facility (or prohibited to be pledged pursuant to the terms of any Accounts Receivable Facility) during the period that such Accounts and other property are subject to the lien thereof; provided, however, that at such time as any such Accounts or other property pledged as collateral under any Accounts Receivable Facility shall no longer be subject to the lien thereof, any and all such Accounts and other property shall become Pledged Collateral hereunder and shall be subject to the Lien and security interest created by this Agreement without further action by any party other than actions required to perfect such security interest.

SECTION 2.2 Secured Obligations. This Agreement secures, and the Pledged Collateral is collateral security for, the payment and performance in full when due of the Secured Obligations.

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SECTION 2.3 Future Advances. This Agreement shall secure the payment of any and all amounts advanced from time to time pursuant to the Loan Documents and the Interest Rate Protection Agreements.

SECTION 2.4 No Release. Nothing set forth in this Agreement shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any Person under or in respect of any of the Pledged Collateral or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, any Interest Rate Protection Agreement or any other Loan Document, or under or in respect of the Pledged Collateral or made in connection herewith or therewith. The obligations of each Pledgor contained in this Section 2.4 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

### ARTICLE III

#### PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF PLEDGED COLLATERAL

SECTION 3.1 Delivery of Certificated Securities Collateral. All certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank. Each Pledgor

hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Pledgor after the date hereof shall immediately upon receipt thereof by such Pledgor be delivered to and held by or on behalf of the Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent. The Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, the Collateral Agent shall have the right at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.2 Perfection of Uncertificated Securities Collateral. Each Pledgor represents and warrants that the Collateral Agent has a perfected first priority security interest in all uncertificated Pledged Securities pledged by it hereunder that are in existence on the date hereof.

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Each Pledgor hereby agrees that if any issuer of Pledged Securities is organized in a jurisdiction which does not permit the use of certificates to evidence equity ownership, or if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable law, record such pledge on the equityholder register or the books of the issuer, cause the issuer to execute and deliver to the Collateral Agent an acknowledgment of the pledge of such Pledged Securities substantially in the form of Exhibit 1 annexed hereto, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Pledged Securities under the terms hereof and provide to the Collateral Agent an opinion of counsel, in form and substance satisfactory to the Collateral Agent, confirming such pledge and perfection thereof.

SECTION 3.3 Financing Statements and Other Filings. The only filings, registrations and recordings necessary and appropriate to create, preserve, protect and perfect the security interest granted by each Pledgor to the Collateral Agent pursuant to this Agreement in respect of the Pledged Collateral are listed in Schedule 3.3 annexed hereto. All such filings, registrations and recordings have been filed, registered and recorded contemporaneously with the execution of the Loan Documents or shall be filed, registered and recorded immediately after the date thereof. Each Pledgor agrees that at any time and from time to time, it will execute and, at the sole cost and expense of the Pledgors file and refile, or permit the Collateral Agent to file and refile, such financing statements, continuation statements and other documents (including, without limitation, this Agreement), in form acceptable to the Collateral Agent, in such offices (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office) as the Collateral Agent may deem necessary or appropriate, wherever required or permitted by law in order to perfect, continue and maintain a valid, enforceable, first priority security interest in the Pledged Collateral as provided herein and to preserve the other rights and interests granted to the Collateral Agent hereunder, as against third parties, with respect to any Pledged Collateral. Each Pledgor hereby authorizes the Collateral Agent to file any such financing or continuation statement or other document without the signature of such Pledgor where permitted by law.

SECTION 3.4 Perfection in Investment Property. Contemporaneously with the execution and delivery of the Loan Documents each Pledgor shall comply with the provisions of Section 8.1 hereof.

SECTION 3.5 Joinder of Affiliates. The Pledgors shall cause each Affiliate of the Borrower which, from time to time, after the date hereof shall be required to pledge any assets to the Collateral Agent for the benefit of the Secured Parties pursuant to the provisions of the Credit Agreement, to execute and deliver to the Collateral Agent a joinder agreement substantially in the form of Exhibit 3 annexed hereto and, upon such execution and delivery, such Affiliate shall be deemed to be a "Subsidiary Guarantor" or a "Subsidiary Pledgor", as appropriate and a "Pledgor" for all purposes hereunder. The execution and delivery of such joinder agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Pledgor as a party to this Agreement.

SECTION 3.6 Motor Vehicles. At any time after the occurrence and during the continuance of an Event of Default, each Pledgor shall, upon the request of the Collateral Agent, de-

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liver to the Collateral Agent originals of the certificates of title or ownership for the motor vehicles (and any other Equipment covered by certificates of title or ownership owned by it) with the Collateral Agent listed as lienholder therein.

SECTION 3.7 Supplements; Further Assurances. Each Pledgor agrees to take such further actions, and to execute and deliver to the Collateral Agent such additional assignments, agreements, supplements, powers, lien waivers and instruments, as the Collateral Agent may deem necessary or appropriate, wherever required or permitted by law, in order to perfect, preserve and protect the security interest in the Pledged Collateral as provided herein and the rights and interests granted to the Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm unto the Collateral Agent or permit the Collateral Agent to exercise and enforce its respective rights, powers and remedies hereunder with respect to any Pledged Collateral. Without limiting the generality of the foregoing, each Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Collateral Agent from time to time such lists, descriptions and designations of the Pledged Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments. The Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Collateral Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Pledged Collateral. All of the foregoing shall be at the sole cost and expense of the Pledgors.

SECTION 3.8 Use and Pledge of Pledged Collateral. Unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time execute and deliver, upon written request of any Pledgor and at the sole cost and expense of the Pledgors, any and all instruments, certificates or other documents, in a form reasonably requested by such Pledgor, necessary or appropriate in the reasonable judgment of such Pledgor to enable such Pledgor to continue to exploit, license, use, enjoy and protect the Pledged Collateral in accordance with the terms hereof and the Credit Agreement. The Pledgors and the Collateral Agent acknowledge that this Agreement is intended to grant to the Collateral Agent for the benefit of the Secured Parties a security interest in and Lien upon the Pledged Collateral and shall not constitute or create a present assignment of any of the Pledged Collateral.

SECTION 3.9 Other Actions. In order to further insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Pledged Collateral, each Pledgor agrees, in each case at such Pledgor's own expense, to take the following actions with respect to the following Pledged Collateral:

(a) Instruments and Tangible Chattel Paper. Upon the occurrence and during the continuance of any Event of Default, unless upon the request of the Borrower such requirement is waived by the Collateral Agent in its sole discretion, each Pledgor shall thereafter deliver to the Collateral Agent, as soon as practicable but in no event later than five days after receipt thereof by such Pledgor, any Instrument or Tangible Chattel Paper evidencing any Pledged Collateral. Any Instrument or Tangible Chattel Paper delivered to the Collateral

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Agent pursuant to this Section 3.9(a) shall be appropriately endorsed (if applicable) to the order of the Collateral Agent, as agent for the Secured Parties, and shall thereafter be held by the Collateral Agent as further security hereunder during the continuance of any Event of Default.

(b) Electronic Chattel Paper and Transferable Records. Upon the occurrence and during the continuance of any Event of Default, unless upon the request of the Borrower such requirement is waived by the Collateral Agent in its sole discretion, if any amount payable under or in connection with any of the Pledged Collateral shall be evidenced by any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Collateral Agent thereof and shall promptly thereafter take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent "control" under UCC Section 9-105 of such Electronic Chattel Paper or "control" under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

(c) Letter-of-Credit Rights. Upon the occurrence and during the continuance of any Event of Default, unless upon the request of the

Borrower such requirement is waived by the Collateral Agent in its sole discretion, if any Pledgor is a beneficiary under a Letter of Credit now or hereafter issued in favor of such Pledgor, such Pledgor shall promptly notify the Trustee thereof and such Pledgor shall promptly thereafter, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit.

(d) Commercial Tort Claims. As of the date hereof each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims other than those listed in Schedule 1.1(j) annexed hereto. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim having a claim value in an amount in excess of \$100,000 individually or \$250,000 in the aggregate, such Pledgor shall immediately notify the Collateral Agent in writing signed by such Pledgor of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Collateral Agent.

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#### ARTICLE IV

##### REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1 Payment. Such Pledgor 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 such Pledgor under the Loan Documents and Interest Rate Protection Agreements.

SECTION 4.2 Authority and Validity; Preservation of Corporate Existence.

(i) Such Pledgor represents and warrants that (A) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (B) it is duly qualified to transact business and is in good standing in each state in which the Pledged Collateral is located except to the extent the failure to do so could not be reasonably expected to result in a Material Adverse Effect, (C) it has full organizational power and lawful authority to execute and deliver this Agreement and to pledge the Pledged Collateral as contemplated herein, and all corporate governmental actions, consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained and (D) this Agreement is a legal, valid and binding obligation of such Pledgor, enforceable against such Pledgor in accordance with its terms.

(ii) Such Pledgor shall (A) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization, (B) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Pledged Collateral is located except to the extent the failure to do so could not be reasonably expected to result in a Material Adverse Effect and (C) 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 Perfection Actions; Prior Liens. Upon the completion of the deliveries, filings and other actions contemplated in Section 3.1 through Section 3.4 hereof, the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement in and to the Pledged Collateral will constitute a perfected, continuing first priority security interest therein, superior and prior to the rights of all other Persons therein other than with respect to the holders of Permitted Collateral Liens.

SECTION 4.4 Limitation on Liens. Such Pledgor is as of the date hereof, and, as to Pledged Collateral acquired by it from time to time after the date hereof, such Pledgor will be, the sole direct and beneficial owner of all Pledged Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than (i) Prior Liens (but not to extensions, amendments, supplements or replacements of Prior Liens unless consented to by the Collateral Agent), (ii) the Lien and security interest created by this Agreement, (iii) Contested Liens and (iv) the Liens described in clause (e) of Section 6.02 of the Credit Agreement (the Liens described in clauses (i)

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through (iv) of this sentence, collectively, "Permitted Collateral Liens"); provided, it is understood that Permitted Liens on Property not constituting Pledged Collateral are not prohibited by this Agreement. Pledgor shall defend the Pledged Collateral pledged by it hereunder against all claims and demands of all Persons at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party. There is no agreement, and no Pledgor shall enter into any agreement or take any other action, that would result in the imposition of any other Lien, restrict the transferability of any of the Pledged Collateral or otherwise impair or conflict with such Pledgor's obligations or the rights of the Collateral Agent hereunder.

SECTION 4.5 Other Financing Statements. There is no (nor will there be any) valid or effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral other than financing statements relating to Permitted Collateral Liens, and so long as any of the Secured Obligations remain unpaid or the Commitments of the Lenders to make any Loan or to issue any Letter of Credit shall not have expired or been sooner terminated, no Pledgor shall execute, authorize or permit to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to any Pledged Collateral, except, in each case, financing statements filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holder of the Permitted Collateral Liens.

SECTION 4.6 Chief Executive Office; Records; Change of Name; Jurisdiction of Organization.

(i) The chief executive office of such Pledgor is located at the address indicated next to its name in Schedule 4.6(i) annexed hereto. Such Pledgor shall not move its chief executive office to any location other than one within the continental United States that is listed in such Schedule 4.6(i) except to such new location as such Pledgor may establish in accordance with the last sentence of this Section 4.6(i). All tangible evidence of all Accounts and General Intangibles of such Pledgor and the only original books of account and records of such Pledgor relating thereto are, and will continue to be, kept at such chief executive office or such other location listed in Schedule 4.6(i) annexed hereto, or at such new location for such chief executive office as such Pledgor may establish in accordance with the last sentence of this Section 4.6(i). All Accounts and General Intangibles of such Pledgor are, and will continue to be, controlled and monitored (including, without limitation, for general accounting purposes) from such chief executive office location or such other location listed in Schedule 4.6(i) annexed hereto, or such new location as such Pledgor may establish in accordance with the last sentence of this Section 4.6(i). Such Pledgor shall not establish a new location for its chief executive office to any location other than one within the continental United States that is listed in Schedule 4.6(i) or change its name, identity or structure until (i) it shall have given the Collateral Agent not less than fifteen (15) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such new location within the continental United States or name and providing such other information in connection therewith as the Collateral Agent may request and (ii) with respect to such new location or name, such Pledgor shall have taken all action satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral intended to be granted hereby, including, without limitation, using commercially reasonable efforts to obtain waivers of

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landlord's or warehouseman's liens with respect to such new location, if required by the terms hereof or otherwise reasonably requested by the Collateral Agent.

(ii) The exact legal name, type of organization and jurisdiction of organization (together with the organizational identification number, if any, issued by such jurisdiction to such Pledgor and such Pledgor's employer identification number) of such Pledgor is set forth in Schedule 4.6(ii) hereto. Such Pledgor shall not "reincorporate" or "reorganize" or otherwise cause the Pledged Collateral to be transferred to a Person incorporated or organized in another state except to the extent (a) permitted pursuant to the provisions of the Credit Agreement, (b) it shall have given to the Collateral Agent not less than fifteen (15) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do clearly describing such transaction and providing such other information in connection therewith as the Collateral Agent may request and (c) with respect to such transaction, such Pledgor shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral intended to be granted hereby.

(iii) The Collateral Agent may rely on opinions of counsel as to whether any or all UCC financing statements of the Pledgors need to be amended as a

result of any of the changes described in Sections 4.6(i) and 4.6(ii). If any Pledgor fails to provide information to the Collateral Agent about such changes on a timely basis, the Collateral Agent shall not be liable or responsible to any party for any failure to maintain a perfected security interest in such Pledgor's property constituting Pledged Collateral for which the Collateral Agent needed to have information relating to such changes. The Collateral Agent shall have no duty to inquire about such changes if any Pledgor does not inform the Collateral Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Pledgor.

SECTION 4.7 Location of Inventory and Equipment. All Inventory and Equipment of such Pledgor (excluding Inventory and Equipment of such Pledgor that (i) at no time has a fair market value (individually or in the aggregate at any one location) in excess of \$50,000 and (ii) is located and retained in the ordinary course of such Pledgor's business at a facility owned or leased by a vendor or customer of such Pledgor) are located as of the date hereof at the chief executive office or such other location listed in Schedule 4.6(i) annexed hereto. Such Pledgor shall not move any Inventory or Equipment (excluding Inventory and Equipment of such Pledgor that (i) at no time has a fair market value (individually or in the aggregate at any one location) in excess of \$50,000 and (ii) is located and retained in the ordinary course of such Pledgor's business at a facility owned or leased by a vendor or customer of such Pledgor) to any location other than one within the Continental United States that is listed in such Schedule 4.6(i) until (i) it shall have given the Collateral Agent not less than fifteen (15) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such new location within the Continental United States and providing such other information in connection therewith as the Collateral Agent may request and (ii) with respect to such new location, such Pledgor shall have taken all action satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral intended to be granted hereby, including, without limitation, using commercially reasonable efforts to obtain waivers of landlord's or warehouseman's liens

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with respect to such new location, if required by the terms hereof or otherwise reasonably requested by the Collateral Agent. In the event any Pledgor shall inadvertently move any Inventory or Equipment to any location without complying with the provisions of the immediately preceding sentence, such noncompliance shall not constitute a Default hereunder if the Inventory or Equipment so moved does not, individually or in the aggregate with all other Inventory or Equipment so moved to one location, have a fair market value in excess of \$250,000; provided, however, that upon such Pledgor obtaining knowledge of such noncompliance such Pledgor shall promptly notify the Collateral Agent of the location of such Inventory or Equipment. Unless an Event of Default shall have occurred and be continuing, each Pledgor shall be permitted to sell Equipment to a foreign Subsidiary in the ordinary course of such Pledgor's business in accordance with Section 6.05(b) of the Credit Agreement; provided, however, that in the case of any such sale to a foreign Subsidiary of Equipment, which (individually or in the aggregate) has a fair market value in excess of \$150,000, such Pledgor shall have given the Collateral Agent not less than fifteen (15) days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, (i) clearly describing the proposed sale, the fair market value of the Equipment to be sold, the proposed acquiror, the location of such acquiror and providing such other information in connection therewith as the Collateral Agent may request, (ii) stating that such sale is being made in accordance with the provisions of clause (i) or (ii) of Section 6.05 of the Credit Agreement, as applicable, and (iii) certifying as to whether or not, pursuant to the provisions of Section 2.13 of the Credit Agreement, the Net Cash Proceeds of such sale must be applied to the prepayments contemplated in Section 2.13 of the Credit Agreement.

SECTION 4.8 Warehouse Receipts Non-Negotiable. If any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of the Pledged Collateral, the applicable Pledgor shall not permit such warehouse receipt or receipt in the nature thereof to be "negotiable" (as such term is used in Section 7-104 of the UCC or under other relevant law).

SECTION 4.9 Condition and Maintenance of Equipment. The Equipment of such Pledgor is in good repair, working order and condition, reasonable wear and tear excepted. Each Pledgor shall cause the Equipment to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially practicable make or cause to be made all repairs, replacements and other improvements which are necessary or appropriate in the conduct of such Pledgor's business (except to the extent that such Equipment may be disposed of pursuant to Section 6.05 of the Credit Agreement); provided, however, that in the case of any Destruction to any of the Equipment, which (individually or in the aggregate) exceeds \$250,000 such Pledgor shall

give prompt notice thereof to the Collateral Agent and repair or restore such Equipment in accordance with the provisions of Section 4.17 hereof.

SECTION 4.10 Corporate Names; Prior Transactions. Such Pledgor has not, during the past five years, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in Schedule 4.10 annexed hereto.

SECTION 4.11 Due Authorization and Issuance. All of the Pledged Shares have been, and to the extent hereafter issued will be upon such issuance, duly authorized, validly issued and

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fully paid and nonassessable (subject to the personal liability that may be imposed on shareholders by Section 180.0622(2)(b) of the Wisconsin Business Corporation Law). All of the Initial Pledged Interests have been fully paid for, and there is no amount or other obligation owing by any Pledgor to any issuer of the Initial Pledged Interests in exchange for or in connection with the issuance of the Initial Pledged Interests or any Pledgor's status as a partner or a member of any issuer of the Initial Pledged Interests.

SECTION 4.12 No Violations, etc. The pledge of the Pledged Securities pursuant to this Agreement does not violate Regulations T, U or X of the Federal Reserve Board.

SECTION 4.13 No Options, Warrants, etc. There are no options, warrants, calls, rights, commitments or agreements of any character to which such Pledgor is a party or by which it is bound obligating such Pledgor to issue, deliver or sell or cause to be issued, delivered or sold additional Pledged Securities or obligating such Pledgor to grant, extend or enter into any such option, warrant, call, right, commitment or agreement. There are no voting trusts or other agreements or understandings to which such Pledgor is a party with respect to the transfer, voting or exercise of any other right of the equity interests of any issuer of the Pledged Securities.

SECTION 4.14 No Claims. Such Pledgor owns or has rights to use all of the Pledged Collateral pledged by it hereunder and all rights with respect to any of the foregoing used in, necessary for or material to such Pledgor's business as currently conducted and as contemplated to be conducted pursuant to the Loan Documents. To such Pledgor's knowledge, the use by such Pledgor of such Pledged Collateral and all such rights with respect to the foregoing do not infringe on the rights of any Person. No claim has been made and remains outstanding that such Pledgor's use of any Pledged Collateral does or may violate the rights of any third Person that would have a Material Adverse Effect.

SECTION 4.15 No Conflicts, Consents, etc. Neither the execution and delivery hereof by each Pledgor nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates any Operative Agreement of such Pledgor or any issuer of Pledged Securities, (ii) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which such Pledgor is a party, or by which it may be bound or to which any of its properties or assets may be subject, (iii) conflicts with any Requirement of Law applicable to any such Pledgor or its property or assets, or (iv) 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 property or assets now owned or hereafter acquired by such Pledgor. No consent of any party (including, without limitation, equityholders or creditors of such Pledgor or any account debtor under an Account) 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 (A) the pledge by such Pledgor of the Pledged Collateral pledged by it pursuant to this Agreement or for the execution, delivery or performance hereof by such Pledgor, except as set forth in Schedule 4.15 annexed hereto, (B) the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or (C) the exercise by the Collateral Agent of the remedies in respect of the Pledged Collateral pursuant to this Agreement. With respect to each consent, authorization, approval, license or other action described in Schedule 4.15 annexed hereto, such Pledgor shall use its best efforts to cause

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the counterparty with respect thereto to deliver such consent, authorization, approval or license or otherwise cause such other action to be taken within 30 days after the date hereof; provided, however, that such Pledgor shall in no event be required to pay or cause to be paid any remuneration to any such counterparty in order to obtain such consent, authorization, approval or licenses to the extent that it would be commercially unreasonable so to do. In



the event that the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement and 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 Collateral Agent, such Pledgor agrees to use its best efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.16 Pledged Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party in connection with this Agreement, in each case, relating to the Pledged Collateral, is accurate and complete in all material respects. The Pledged Collateral described on the schedules annexed hereto constitutes all of the property of such type of Pledged Collateral owned or held by the Pledgors.

SECTION 4.17 Insurance; Condemnation.

(i) Required Insurance Policies and Coverages. No Pledgor shall take any action that impairs the rights of the Collateral Agent or any Secured Party in the Pledged Collateral and (A) as of the date hereof, the Pledged Collateral and the use, occupancy and operation thereof comply with all Insurance Requirements, and there exists no default under any Insurance Requirement, except to the extent that such default could not reasonably be expected to result in a Material Adverse Effect, (B) all premiums due and payable with respect to the Required Insurance Policies have been paid, (C) all Insurance Policies are in full force and effect and such Pledgor has not received notice of violation or cancellation thereof, except to the extent that such violation could not reasonably be expected to result in a Material Adverse Effect and (D) all Insurance Policies or Insurance Certificates have been delivered to the Collateral Agent in form satisfactory to the Collateral Agent. Each Pledgor shall at all times keep the Pledged Collateral insured, at such Pledgor's own expense, to the Collateral Agent's satisfaction against fire, theft and all other risks to which the Pledged Collateral may be subject, in such amounts and with such deductibles as would be maintained by a Prudent Operator or as the Collateral Agent may otherwise require, including, without limitation, the following insurance policies and coverages:

- (A) 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 Equipment and Inventory;
- (B) commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Pledged Collateral, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed

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upon the Collateral Agent and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Pledged Collateral;

- (C) explosion insurance in respect of any boilers, machinery and similar apparatus located on or comprising the Equipment and Inventory;
- (D) business interruption insurance;
- (E) worker's compensation insurance as required by the laws of the state where the Pledged Collateral is located to protect such Pledgor and the Collateral Agent against claims for injuries sustained in the course of employment at the premises of such Pledgor; and
- (F) such other insurance against risks as the Collateral Agent may from time to time require.

(ii) Required Form of Insurance Policies. Each Insurance Policy described in clause (i) of this Section 4.17 shall provide that:

- (A) it may not be modified, reduced, canceled or otherwise terminated without at least thirty (30) days' prior written notice to the Collateral Agent;
- (B) the Collateral Agent 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;
- (C) all losses thereunder shall be payable notwithstanding any act or negligence of such Pledgor or its agents or employees which otherwise

might have resulted in a forfeiture of all or a part of such insurance payments;

- (D) to the extent such Insurance Policy constitutes Property Insurance, all losses payable thereunder shall be payable to the Collateral Agent, 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
- (E) with respect to Liability Insurance, the Collateral Agent shall be named as an additional insured.

(iii) Settlements. Settlement of any claim under any of the Required Insurance Policies, if such claim involves any loss in excess of \$1,000,000 (in the judgment of the Collateral Agent), shall require the prior written approval of the Collateral Agent, and such Pledgor shall cause each such policy to contain a provision to such effect.

(iv) Renewals. At least ten (10) days prior to the expiration of any Required Insurance Policy, such Pledgor shall deliver to the Collateral Agent a Required Insurance Policy or Policies renewing or extending such expiring Required Insurance Policy or Policies, renewal or exten-

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sion Insurance Certificates or other reasonable evidence of renewal or extension providing that the Insurance Policies are in full force and effect.

(v) Additional Insurance. Such Pledgor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those Required Insurance Policies required to be maintained under this Section 4.17, unless the Collateral Agent is included thereon as an additional insured and, if applicable, with loss payable to the Collateral Agent under an endorsement containing the provisions described in clause (ii) of this Section 4.17. Such Pledgor shall immediately notify the Collateral Agent whenever any such separate insurance policy is obtained and shall promptly deliver to the Collateral Agent the Required Insurance Policy or Insurance Certificate evidencing such insurance.

(vi) Blanket Coverage. Such Pledgor may maintain the coverages required by clause (i) of this Section 4.17 under blanket policies covering the Pledged Collateral and other property owned or operated by such Pledgor or an Affiliate of such Pledgor if the terms of such blanket policies otherwise comply with the provisions of clause (i) of this Section 4.17 and contain specific coverage allocations in respect of the Equipment and Inventory complying with the provisions of clause (i) of this Section 4.17.

(vii) Proceeds of Destructions and Taking.

(A) If there shall occur any Destruction in an amount in excess of \$250,000, such Pledgor shall promptly send to the Collateral Agent a notice setting forth the nature and extent of such Destruction. If there shall occur any Taking, such Pledgor shall immediately notify the Collateral Agent upon receiving notice of such Taking or commencement of proceedings therefor. The Collateral Agent may participate in any proceedings or negotiations which might result in any Taking, and such Pledgor shall deliver or cause to be delivered to the Collateral Agent all instruments requested by it to permit such participation. The Collateral Agent may be represented by counsel satisfactory to it at the expense of such Pledgor in connection with any such participation. Such Pledgor shall pay all fees, costs and expenses incurred by the Collateral Agent in connection with any Taking and in seeking and obtaining any award or payment on account thereof. The Net Insurance Proceeds and Net Condemnation Awards are hereby assigned and shall be paid to the Collateral Agent. Such Pledgor shall take all steps necessary to notify the condemning authority of such assignment. All Net Insurance Proceeds and Net Condemnation Awards, shall be applied in accordance with the provisions of Sections 4.17(vii)(B), 4.17(vii)(C) and 4.17(vii)(D).

(B) 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, such Pledgor shall have the right, at such Pledgor'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 Pledged Collateral. In the event such Pledgor elects to perform a Restoration, such Pledgor shall within thirty (30) days after the date that such Pledgor receives notice of collection by the Collateral Agent of the applicable Net Insurance Proceeds or Net Condemnation Award, as the case may be, deliver to the Collateral Agent (1) a written notice of such election and (2) an Officers'

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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 4.17(vii)(B) and (b) no Event of Default has occurred and is continuing (the items described in clauses (1) and (2) of this sentence, collectively, the "Restoration Election Notice"). In the event the Collateral Agent does not receive a Restoration Election Notice within such 30-day period, the Collateral Agent may apply any such Net Insurance Proceeds or Net Condemnation Award held by the Collateral Agent 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 Collateral Agent, may continue to hold such Net Insurance Proceeds or Net Condemnation Award as additional collateral to secure the performance by such Pledgor of the Secured Obligations. In the event such Pledgor elects to perform any Restoration contemplated by this Section 4.17(vii)(B), the Collateral Agent shall release such Net Condemnation Award or Net Insurance Proceeds to such Pledgor following receipt of a Restoration Election Notice in accordance with the provisions of Section 8.2(ii) hereof. Such Pledgor 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 Pledged Collateral subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Pledged Collateral will be in the same condition and shall be of at least equal value and utility for its intended purposes as the Pledged Collateral was immediately prior to such Destruction or Taking. Such Pledgor 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.

(C) 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 Collateral Agent 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 Pledged Collateral. In the event a Restoration is to be performed under this Section 4.17(vii)(C), the Collateral Agent shall not release any part of the Net Condemnation Award or Net Insurance Proceeds except in accordance with the provisions of Sections 4.17(vii)(C) and 4.17(vii)(D) hereof, and such Pledgor shall, prior to commencing any work to effect a Restoration, promptly (but in no event later than ninety (90) days following any Destruction or Taking) furnish to the Collateral Agent:

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

(ii) a certificate (an "Engineer's Certificate") of an independent, reputable engineer acceptable to the Collateral Agent 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

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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 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 Collateral Agent 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 Collateral Agent for application toward the cost of such Restoration.

The Collateral Agent shall have the right to review and approve the Plans and Specifications. Promptly upon any approval of the Plans and Specifications by

the Collateral Agent, such Pledgor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. Such Pledgor 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.

(D) 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 Collateral Agent, shall be held by the Collateral Agent as additional collateral to secure the performance by such Pledgor of the Secured Obligations.

(viii) Restoration Advances Following Destruction or Taking of Mortgaged Property. In the event such Pledgor shall be required or permitted to perform a Restoration of the Premises as provided in Section 4.17(vii)(C) hereof, the Collateral Agent shall apply any Net Insurance Proceeds or the Net Condemnation Award held by the Collateral Agent 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 such Pledgor or, at the Collateral Agent'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:

- (A) Each request for payment shall be made on at least ten (10) days' prior notice to the Collateral Agent and shall be accompanied by an Engineer's Certificate stating (w) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as approved by the Collateral Agent, and in accordance with all provisions of law, (x) the sums requested are required to reimburse such

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Pledgor for payments by such Pledgor 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 Collateral Agent, such sums do not exceed the cost of the Restoration to the date of such Engineer's Certificate, (y) 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 (z) 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);

- (B) Each request for payment shall be accompanied by an opinion of counsel to such Pledgor (which counsel shall be independent and acceptable to the Collateral Agent), opining as to the continuing priority, validity and perfection of the Lien granted to the Collateral Agent hereunder and confirming the attachment thereof to all Restoration work then completed, together with copies of appropriate lien waivers executed and delivered by each contractor, subcontractor, materialmen or other Person performing services or supplying materials in connection with such Restoration; and
- (C) The final request for any payment after the Restoration has been completed shall be accompanied by an Engineer'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.

(ix) Delivery After Foreclosure. In the event that the proceeds of any insurance claim are paid after the Collateral Agent has exercised its right to foreclose after an Event of Default such proceeds shall be paid to the Collateral Agent to satisfy any deficiency remaining after such foreclosure. The Collateral Agent shall retain its interest in the Insurance Policies required to be maintained pursuant to this Agreement during any redemption period.

SECTION 4.18 Payment of Taxes; Compliance with Laws; Contesting Liens; Claims. Each Pledgor represents and warrants that all Charges imposed upon or assessed against the Pledged Collateral have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable. Each Pledgor shall pay prior to the date on which any penalties would attach thereto all Charges against the Pledged Collateral. Each Pledgor shall comply with all Requirements of Law applicable to the Pledged Collateral the failure to comply with which would have a Material Adverse Effect. Notwithstanding the foregoing, each Pledgor 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 thereof and the sale or forfeiture of the Pledged Collateral or any part thereof to satisfy the same; 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, such Pledgor shall have (A) made provision for the payment of such contested Charge on such Pledgor's books if and to the extent required by GAAP, or (B) at the option and upon the request of the Collateral Agent, deposited with the Collateral Agent a sum sufficient to pay and discharge such Charge and the Collateral Agent's estimate of

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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 Collateral Agent an instrument in which an insurance carrier acceptable to the Collateral Agent 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 4.18, (i) no contest of any such obligation may be pursued by such Pledgor if such contest would expose the Collateral Agent or any other Secured Party to (A) any possible criminal liability or (B) unless such Pledgor shall have furnished a bond or other security therefor satisfactory to the Collateral Agent, or such Secured Party, 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 such Pledgor pursuant to this Section 4.18 shall become necessary to prevent the imposition of remedies because of non-payment, such Pledgor shall pay or perform the same, in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 4.19 Access to Pledged Collateral, Books and Records; Other Information. Upon request to each Pledgor, the Collateral Agent, 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 times as may be requested by the Collateral Agent all of the Pledged Collateral and Mortgaged Property including, without limitation, all of the books, correspondence and records of such Pledgor relating thereto. The Collateral Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and such Pledgor agrees to render to the Collateral Agent, at such Pledgor's cost and expense, such clerical and other assistance as may be requested by the Collateral Agent with regard thereto. Such Pledgor shall, at any and all times, within a reasonable time after written request by the Collateral Agent, furnish or cause to be furnished to the Collateral Agent, in such manner and in such detail as may be reasonably requested by the Collateral Agent, additional information with respect to the Pledged Collateral.

SECTION 4.20 [Intentionally Omitted].

SECTION 4.21 Benefit to Subsidiary Guarantors and Subsidiary Pledgors . Each Subsidiary Guarantor and Subsidiary Pledgor will receive substantial benefit as a result of the execution, delivery and performance of the Loan Documents.

## ARTICLE V

### CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 5.1 Special Representations and Warranties. As of the time when each of its Accounts arises, each Pledgor shall be deemed to have represented and warranted that such Account and all records, papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, (ii) represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles

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relating to enforceability, evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labor or services or the sale, lease, license, assignment or other disposition and delivery of the merchandise, Goods or other property listed therein or out of an advance or a loan, not subject to the fulfillment of any contract or condition whatsoever or to any defenses, set-offs or counterclaims except with respect to refunds, returns and allowances in the ordinary course of business, or stamp or other taxes, (iii) will, in the case of a Account, except for the original or duplicate original invoice sent to a purchaser evidencing such purchaser's account, be the only original writings evidencing and embodying such obligation of the account debtor named therein and (iv) are in compliance and conform with all applicable Federal, state and local laws and applicable laws of any relevant foreign jurisdiction.

SECTION 5.2 Maintenance of Records. Each Pledgor shall keep and maintain at its own cost and expense complete records of each Account, in a manner consistent with prudent business practice, including, without limitation, records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Each Pledgor shall, at such Pledgor's sole cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts, including, without limitation, all documents evidencing Accounts and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Pledgor). Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may transfer a full and complete copy of any Pledgor's books, records, credit information, reports, memoranda and all other writings relating to the Accounts to and for the use by any Person that has acquired or is contemplating acquisition of an interest in the Accounts or the Collateral Agent's security interest therein without the consent of any Pledgor.

SECTION 5.3 Legend. Each Pledgor shall legend, at the request of the Collateral Agent made at any time after the occurrence and during the continuance of any Event of Default and in form and manner satisfactory to the Collateral Agent, the Accounts and the other books, records and documents of such Pledgor evidencing or pertaining to the Accounts with an appropriate reference to the fact that the Accounts have been assigned to the Collateral Agent for the benefit of the Secured Parties and that the Collateral Agent has a security interest therein.

SECTION 5.4 Modification of Terms, etc. No Pledgor shall rescind or cancel any indebtedness evidenced by any Account or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim, suit or legal proceeding relating thereto, except in the ordinary course of business consistent with prudent business practice, or sell any Account or interest therein without the prior written consent of the Collateral Agent unless permitted pursuant to Section 6.01(1) of the Credit Agreement. Each Pledgor shall timely fulfill all obligations on its part to be fulfilled under or in connection with the Accounts.

SECTION 5.5 Collection. Each Pledgor shall cause to be collected from the account debtor of each of the Accounts, as and when due (including, without limitation, Accounts that are delinquent, such Accounts to be collected in accordance with generally accepted commercial

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collection procedures), any and all amounts owing under or on account of such Account, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account, except that any Pledgor may, with respect to an Account, allow in the ordinary course of business (i) a refund or credit due as a result of returned or damaged or defective merchandise and (ii) such extensions of time to pay amounts due in respect of Accounts and such other modifications of payment terms or settlements in respect of Accounts as shall be commercially reasonable in the circumstances, all in accordance with such Pledgor's ordinary course of business consistent with its collection practices as in effect from time to time. The costs and expenses (including, without limitation, attorneys' fees) of collection, in any case, whether incurred by any Pledgor, the Collateral Agent or any Secured Party, shall be paid by the Pledgors.

SECTION 5.6 [RESERVED].

SECTION 5.7 Payment into Lockboxes. Upon the occurrence and during the continuance of any Event of Default, if the Collateral Agent so directs, each Pledgor shall cause all payments in respect of the Accounts to be deposited into Lockboxes and otherwise comply with the provisions of Section 8.4 hereof. The costs and expenses (including, without limitation, reasonable attorneys' fees) of collection, whether incurred by the Collateral Agent or any Secured Party, shall be paid by the Pledgors.

## ARTICLE VI

### CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 6.1 Pledge of Additional Securities Collateral. Each Pledgor shall, upon obtaining any Pledged Securities or Intercompany Notes of any Person, accept the same in trust for the benefit of the Collateral Agent and promptly (and in any event within five Business Days) deliver to the Collateral Agent a pledge amendment, duly executed by such Pledgor, in substantially the form of Exhibit 2 annexed hereto (each, a "Pledge Amendment"), and the certificates and other documents required under Section 3.1 and Section 3.2 in respect of the additional Pledged Securities or Intercompany Notes which are to be pledged

pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Pledgor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Securities or Intercompany Notes listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

SECTION 6.2 Voting Rights; Distributions; etc.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) Each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not

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inconsistent with the terms or purposes hereof or any other Loan Document; provided, however, that no Pledgor shall in any event exercise such rights in any manner which may have a Material Adverse Effect.

(B) Each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Credit Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall be forthwith delivered to the Collateral Agent to hold as Pledged Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Pledgor and be forthwith delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

(C) The Collateral Agent shall be deemed without further action or formality to have granted to each Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request in order to permit such Pledgor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 6.2(i) (A) hereof and to receive the Distributions which it is authorized to receive and retain pursuant to Section 6.2(i) (B) hereof.

(ii) Upon the occurrence and during the continuance of any Event of Default:

(A) All rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 6.2(i) (A) hereof without any action or the giving of any notice shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights.

(B) All rights of each Pledgor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 6.2(i) (B) hereof shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions.

(iii) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 6.2(ii) (A) hereof and to receive all Distributions which it may be entitled to receive under Section 6.2(ii) (B) hereof.

(iv) All Distributions which are received by any Pledgor contrary to the provisions of Section 6.2(ii) (B) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Pledgor and shall immediately be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

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SECTION 6.3 No New Securities. Except to the extent otherwise permitted under Article IX hereof, each Pledgor shall cause each issuer of the Pledged Securities not to issue any stock or other securities or equity interests in addition to or in substitution for the Pledged Securities issued by such issuer, except to such Pledgor.

SECTION 6.4 Operative Agreements. Each Pledgor has delivered to the Collateral Agent true, correct and complete copies of the Operative Agreements.

The Operative Agreements are in full force and effect, have not as of the date hereof been amended or modified except as disclosed to the Collateral Agent, and there is no existing default by any party thereunder or any event which, with the giving of notice of passage of time or both, would constitute a default by any party thereunder. Each Pledgor shall deliver to the Collateral Agent a copy of any notice of default given or received by it under any Operative Agreement within ten days after such Pledgor gives or receives such notice. No Pledgor will terminate or agree to terminate any Operative Agreement or make any amendment or modification to any Operative Agreement which may have an adverse effect on the value of the Pledged Securities and Distributions relating thereto or the Lien and security intended to be granted to the Collateral Agent hereunder.

SECTION 6.5 Defaults, etc. Such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, and such Pledgor is not in violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder. No Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any Person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Operative Agreements and certificates, if any, delivered to the Collateral Agent) which evidence any Pledged Securities of such Pledgor.

#### ARTICLE VII

##### CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 7.1 Grant of License. For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article X hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Pledgor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Pledgor) to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

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SECTION 7.2 Registrations. Except pursuant to licenses and other user agreements entered into by any Pledgor in the ordinary course of business that are listed in Schedule 1.1(f) annexed hereto, on and as of the date hereof (i) each Pledgor owns and possesses the right to use, and has done nothing to authorize or enable any other Person to use, any Copyright, Patent or Trademark listed in Schedules 1.1(a) (1), 1.1(a) (2), 1.1(g) (1), 1.1(g) (2), 1.1(i) (1) and 1.1(i) (2), and (ii) all registrations listed in Schedules 1.1(a) (1), 1.1(a) (2), 1.1(g) (1), 1.1(g) (2), 1.1(i) (1) and 1.1(i) (2) are valid and in full force and effect.

SECTION 7.3 No Violations or Proceedings. To each Pledgor's knowledge, on and as of the date hereof, (i) except as set forth in Schedule 7.3 annexed hereto, there is no violation by others of any right of such Pledgor with respect to any Copyright, Patent or Trademark listed in Schedules 1.1(a) (1), 1.1(a) (2), 1.1(g) (1), 1.1(g) (2), 1.1(i) (1) and 1.1(i) (2) annexed hereto, respectively, pledged by it under the name of such Pledgor, (ii) such Pledgor is not infringing upon any Copyright, Patent or Trademark of any other Person and (iii) no proceedings have been instituted or are pending against such Pledgor or, to such Pledgor's knowledge, threatened, and no claim against such Pledgor has been received by such Pledgor, alleging any such violation, except as may be set forth in Schedule 7.3.

SECTION 7.4 Protection of Collateral Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Collateral Agent of (A) any adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any Intellectual Property Collateral, except to the extent such determination could not reasonably be expected to result in a Material Adverse Effect or (B) the institution of any proceeding or any adverse determination in any Federal, state or local court or administrative body regarding such Pledgor's claim of ownership in or right to use any of the Intellectual Property Collateral, its right to register the Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect, except to the extent that such proceeding or determination could not reasonably be expected to result in a Material Adverse Effect; (ii) maintain and protect the Intellectual Property Collateral necessary for the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement, (iii) not permit to lapse or become



abandoned any material Intellectual Property Collateral necessary for the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement, and not settle or compromise any pending or future litigation or administrative proceeding with respect to the material Intellectual Property Collateral necessary for the operation of such Pledgor's business, in each case, without the consent of the Collateral Agent, (iv) upon such Pledgor obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event which could reasonably be expected to have a Material Adverse Effect with respect to the Intellectual Property Collateral or any portion thereof necessary for the operation of such Pledgor's business, the ability of such Pledgor or the Collateral Agent to dispose of the Intellectual Property Collateral or any portion thereof or the rights and remedies of the Collateral Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property Collateral or any portion thereof, (v) not license the Intellectual Property Collateral other than licenses entered into by such Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that adversely affects the right to receive payments thereunder, or in any manner that would impair the value of the Intellectual Property Collateral or the Lien on and

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security interest in the Intellectual Property Collateral intended to be granted to the Collateral Agent for the benefit of the Secured Parties, without the consent of the Collateral Agent, (vi) until the Collateral Agent exercises its rights to make collection, diligently keep adequate records respecting the Intellectual Property Collateral and (vii) furnish to the Collateral Agent from time to time detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to the Intellectual Property Collateral as the Collateral Agent may from time to time reasonably request.

SECTION 7.5 After-Acquired Property. If any Pledgor shall, at any time before the Secured Obligations have been paid in full or the Commitments of the Lenders to make any Loan or to issue any Letter of Credit have expired or been sooner terminated (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this Section 7.5 with respect to such Pledgor shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party. Each Pledgor shall promptly (i) provide to the Collateral Agent written notice of any of the foregoing and (ii) confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i) and (ii) of the immediately preceding sentence of this Section 7.5 by execution of an instrument in form acceptable to the Collateral Agent.

SECTION 7.6 Modifications. Each Pledgor authorizes the Collateral Agent to modify this Agreement by amending Schedules 1.1(a)(1) and 1.1(a)(2), 1.1(f), 1.1(g)(1) and 1.1(g)(2) and 1.1(i)(1) and 1.1(i)(2) annexed hereto to include any Intellectual Property Collateral acquired or arising after the date hereof of such Pledgor including, without limitation, any of the items listed in Section 7.5 hereof.

SECTION 7.7 Applications. Each Pledgor shall file and prosecute diligently all applications for the Patents, Trademarks or Copyrights now or hereafter pending that would be necessary to the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement to which any such applications pertain, and shall do all acts necessary to preserve and maintain all rights in the Intellectual Property Collateral necessary to the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement. Any and all costs and expenses incurred in connection with any such actions shall be borne by the Pledgors. No Pledgor shall abandon any right to file a Patent, Trademark or Copyright application, or any pending Patent, Trademark or Copyright application or any Patent, Trademark or Copyright necessary for the operation of such Pledgor's business as presently conducted and as contemplated by the Credit Agreement without the consent of the Collateral Agent.

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SECTION 7.8 Litigation.  
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(i) Unless there shall occur and be continuing any Event of Default, each

Pledgor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Each Pledgor shall promptly notify the Collateral Agent in writing as to the commencement and prosecution of any such actions, or written threat thereof relating to the Intellectual Property Collateral which, if adversely determined, would be reasonably likely to have a Material Adverse Effect and shall provide to the Collateral Agent such information with respect thereto as may be requested by the Collateral Agent. In accordance with Section 12.4 hereof each Pledgor shall indemnify and hold harmless each Indemnitee from and against all Indemnified Liabilities which may be imposed on, incurred by or asserted against such Indemnitee in connection with or in any way arising out of the suits, proceedings or other actions contemplated in this Section 7.8(i).

(ii) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Pledgor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Collateral Agent, as the case may be, for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 7.8 in accordance with Section 12.3 hereof. In the event that the Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the request of the Collateral Agent, to take all actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any Person so infringing necessary to prevent such infringement.

#### ARTICLE VIII

##### CERTAIN PROVISIONS CONCERNING DESIGNATED ACCOUNTS, COLLATERAL ACCOUNT AND COLLECTION OF ACCOUNTS

###### SECTION 8.1 Designated Accounts. -----

(i) Each Pledgor hereby represents and warrants that (A) it does not maintain any Commodity Accounts with any Commodity Intermediary and (B) it shall not in the future maintain any Commodity Accounts except with a Qualified Intermediary in accordance with the provisions

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of this Article VIII. Each Pledgor hereby represents and warrants that it does not maintain any Deposit Accounts or Securities Accounts other than the Deposit Accounts and Securities Accounts listed in Schedule 8.1 hereto. Each Pledgor hereby agrees that it shall within 30 days after the date hereof enter into a Control Agreement with respect to each Deposit Account and Securities Account listed in Schedule 8.1 or close any Deposit Account or Securities Account with respect to which it has not entered into a Control Agreement. No Pledgor shall hereafter establish and maintain any Securities Account or Commodity Account with any Securities Intermediary or Commodity Intermediary or any Deposit Account with any Bank unless (1) the applicable Pledgor shall have given the Collateral Agent thirty (30) days' prior written notice of its intention to establish such new Securities Accounts or Commodity Accounts with such Securities Intermediary or Commodity Intermediary or Deposit Account with such Bank, (2) such Securities Intermediary, Commodity Intermediary or Bank shall be reasonably acceptable to the Collateral Agent and (3) such Securities Intermediary, Commodity Intermediary or Bank shall have entered into a Control Agreement. Each Pledgor shall accept any cash and Investment Property in trust for the benefit of the Collateral Agent and within one (1) Business Day of actual receipt thereof deposit any cash or Investment Property and any new securities, instruments, documents or other property by reason of ownership of the Investment Collateral (other than payments of a kind described in Section 8.1(iv) (B) hereof) received by it into a Designated Account.

(ii) Each Pledgor hereby acknowledges and agrees that notwithstanding any provisions hereof or any other circumstance to the contrary, the Collateral Agent shall at all times (A) have "control" (as defined in Section 8-106 of the UCC) of all Investment Property, as confirmed in one or more Control Agreements, and (B) be authorized to direct the applicable Securities Intermediary or

Commodity Intermediary with respect to such Investment Property to comply without further consent of any Pledgor or any investment manager or any other person acting or purporting to act for any Pledgor being required, with all Entitlement Orders originated by the Collateral Agent with respect to the Investment Collateral. The Collateral Agent hereby agrees that it shall not issue any Entitlement Orders to any Securities Intermediary or Commodity Intermediary in respect of the Investment Property except in connection with the Collateral Agent's exercise of remedies upon the occurrence of an Event of Default.

(iii) Each Pledgor hereby acknowledges and agrees that notwithstanding any provisions hereof or any other circumstance to the contrary, the Collateral Agent shall at all times (A) have "control" (as defined in Section 9-104 of the UCC) of any Deposit Account, as confirmed in one or more Control Agreements, and (B) be authorized to direct the institution maintaining the Deposit Account to comply without further consent of any Pledgor or any person acting or purporting to act for any Pledgor being required, with all instructions originated by the Collateral Agent directing disposition of the funds in the Deposit Account. The Collateral Agent hereby agrees that it shall not issue any such instructions to any institution maintaining the Deposit Account except in connection with the Collateral Agent's exercise of remedies upon the occurrence of an Event of Default.

(iv) So long as no Event of Default has occurred and is continuing, each Pledgor may, to the extent not inconsistent with the other provisions hereof or the provisions of the Credit Agreement:

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(A) trade, sell, exchange, lend, apply or transfer from funds or Investment Property a Designated Account; and

(B) receive and retain, free of all right, title and interest of Collateral Agent, all interest and dividend payments made in respect of the Investment Property and exercise any voting rights with respect thereto.

(v) As between the Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property, and the risk of loss of, damage to, or the destruction of any cash or the Investment Property, whether in the possession of, or maintained as a security entitlement or deposit by, or subject to the control of, the Collateral Agent, a Securities Intermediary, a Commodity Intermediary or a Lender, the Pledgor or any other Person; provided, however, that nothing contained in this Section 8.1(v) shall release or relieve any Securities Intermediary, Commodity Intermediary or Lender of its duties and obligations to the Pledgors or any other Person under the applicable Control Agreement or under applicable law. Each Pledgor shall promptly pay all Charges and fees of whatever kind or nature with respect to the cash or Investment Property pledged by it or under this Agreement. In the event any Pledgor shall fail to make such payment contemplated in the immediately preceding sentence, the Collateral Agent may do so for the account of such Pledgor and the Pledgors shall promptly reimburse and indemnify the Collateral Agent from all costs and expenses incurred by the Collateral Agent under this Section 8.1(v) in accordance with Section 12.3 hereof.

#### SECTION 8.2 Collateral Account.

(i) Deposits into Collateral Account. Each Pledgor shall deposit into the Collateral Account from time to time (A) the cash proceeds of any of the Pledged Collateral or any Mortgaged Property (including pursuant to any disposition thereof), (B) the cash proceeds of any Taking or Destruction or loss of title with respect to any Pledged Collateral or Mortgaged Property, (C) any cash in respect of any Pledged Collateral to which the Collateral Agent is entitled pursuant to Section 6.2 hereof, (D) any cash such Pledgor is required to pledge as additional collateral security hereunder pursuant to the Loan Documents and (E) any other amounts that such Pledgor desires to pledge to the Collateral Agent for the benefit of the Secured Parties as additional collateral security hereunder. Each Pledgor shall execute a Control Agreement with respect to the Collateral Account upon the Collateral Agent's request.

(ii) Application of Amounts in Collateral Account. The balance from time to time in the Collateral Account shall constitute part of the Pledged Collateral hereunder and shall not constitute payment of the Secured Obligations until applied as hereinafter provided. So long as no Event of Default has occurred and is continuing or will result therefrom, the Collateral Agent shall within the time periods contemplated in Section 4.17(vii) hereof or in Article X of the applicable Mortgage, as appropriate, after receiving a request of such Pledgor for release of cash proceeds from the Collateral Account remit the cash proceeds on deposit in the Collateral Account to or upon the order of such Pledgor, in periodic installments, if applicable, so long as such Pledgor has (A) with respect to any Pledged Collateral, satisfied the applicable condi-

tions relating thereto set forth in Section 4.17(vii) hereof and (B) with respect to any Mortgaged Property, satisfied the applicable conditions relating thereto set forth in Article X of such Mortgage. In the case of Net Cash Proceeds with respect to any Asset Sale, such Net Cash Proceeds shall be applied in the manner contemplated in Section 2.13(b) of the Credit Agreement. At any time following the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Lenders as specified in the Credit Agreement, shall) in its (or their) discretion apply or cause to be applied (subject to collection) the balance from time to time outstanding to the credit of the Collateral Account to the payment of the Secured Obligations in the manner specified in Article XI hereof (subject, however, in the case of amounts deposited in the L/C Sub-Account, to the provisions of Section 8.3 hereof). The balance from time to time in the Collateral Account shall be subject to withdrawal only as provided herein.

(iii) Investment of Balance in Collateral Account. Amounts on deposit in the Collateral Account shall be invested from time to time in such Cash Equivalents as the respective Pledgor (or, after the occurrence and during the continuance of an Event of Default, the Collateral Agent) shall determine, which Cash Equivalents shall be held in the name and be under the control of the Collateral Agent (or any sub-agent); provided, however, that at any time after the occurrence and during the continuance of an Event of Default, the Collateral Agent may (and, if instructed by the Lenders as specified in the Credit Agreement, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such Cash Equivalents and to apply or cause to be applied the proceeds thereof to the payment of the Secured Obligations in the manner specified in Article XI hereof.

SECTION 8.3 Cover for Letter of Credit Liabilities. Amounts deposited into the Collateral Account as cover for liabilities in respect of Letters of Credit under the Credit Agreement pursuant to Section 2.23 thereof shall be held by the Collateral Agent in a separate sub-account designated as the "L/C Sub-Account" (the "L/C Sub-Account") and, notwithstanding any other provision hereof to the contrary, all amounts held in the L/C Sub-Account shall constitute collateral security first for the liabilities in respect of Letters of Credit outstanding from time to time and second as collateral security for the other Secured Obligations hereunder until such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of Letters of Credit have been paid in full.

SECTION 8.4 Collection of Accounts.

(i) Lockboxes. Upon the occurrence and during the continuance of an Event of Default, if the Collateral Agent so directs, each Pledgor shall at all times maintain one or more lockboxes (the "Lockboxes") with a Lockbox Bank (which shall be a Lender) and shall irrevocably instruct all account debtors on all of the Accounts of such Pledgor, all agents for the collection of Accounts and all issuers or obligors under letters of credit or other documents supporting Accounts to remit all Collections to such Lockboxes. Each Pledgor, the Collateral Agent and each of the financial institutions (which shall be a Lender) selected by such Pledgor and acceptable to the Collateral Agent (each, a "Lockbox Bank" and, collectively, the "Lockbox Banks") shall enter into Lockbox Agreements, which among other things shall provide for the opening of an account for the deposit of Collections (each, a "Collection Account" and, collectively, the "Collection Accounts") at a Lockbox Bank. Each Pledgor shall maintain separate and distinct Lockboxes and Collection Accounts and the Lockboxes and Collec-

tion Accounts of each Pledgor will be clearly identified as the Lockbox and Collection Accounts of such Pledgor and no other Person, including no other Pledgor. Such amounts shall be so deposited on a daily basis. All Collections and other amounts received by or on behalf of each such Pledgor from any account debtor, agent or credit support party shall be held in trust for the benefit of the Collateral Agent and shall be deposited into the Collection Account of such Pledgor within one Business Day after such Pledgor's receipt thereof. Such arrangements shall not be modified or terminated without the prior written consent of the Collateral Agent.

(ii) Lockbox Concentration Account. Upon the terms and subject to the conditions set forth in the Lockbox Agreements, all good funds held in each Collection Account shall be wired each Business Day into a separate account for each such Pledgor (each, a "Lockbox Concentration Account") maintained by the Collateral Agent. Each Pledgor shall accurately report all amounts deposited in the Collection Accounts to ensure the proper transfer of funds as set forth above. Each Pledgor acknowledges and agrees that, (A) pursuant to the Lockbox Agreements executed and delivered by such Pledgor it has irrevocably directed the Lockbox Banks to transfer no later than 2:00 P.M. (New York time) each Business Day all available funds, investments, money, cash, Instruments,

securities, rights, Proceeds and other property and amounts contained in their respective Collection Accounts into the Lockbox Concentration Account established for such Pledgor hereunder and (B) the Collateral Agent shall have exclusive dominion and control of the Lockbox Concentration Accounts. If any Pledgor receives directly any remittance or payments notwithstanding the arrangements for payments directly into Collection Accounts (as provided for in the Lockbox Agreements), such Pledgor shall hold such remittance and payments in trust for the Collateral Agent, and shall deposit such amounts into its respective Lockbox Concentration Account within one Business Day after such Pledgor's receipt thereof.

(iii) Treatment of Lockbox Concentration Account. All deposits maintained in the Lockbox Concentration Accounts, and any additional moneys and other property subsequently maintained with any Lockbox Bank, shall be transferred to the Collateral Account. All such deposits in the Collateral Account shall be held by the Collateral Agent as Pledged Collateral for the Secured Obligations or applied to the payment of the Secured Obligations in accordance with Article XI hereof. The costs and expenses (including attorney's fees) of collection, whether incurred by any Pledgor or the Collateral Agent (or any sub-agent), shall be borne by the Pledgors.

SECTION 8.5 Restriction on Credit Balances in Deposit Accounts. The Pledgors shall not at any time deposit or cause to be deposited into any account, except as otherwise specifically permitted pursuant to the provisions of this Article VIII, any funds, investments, money, cash, instruments, securities, rights, proceeds and other property and amounts received by or on behalf of the Pledgors from any source; provided, however, that so long as no Event of Default shall have occurred and be continuing, the Pledgors may deposit or cause to be deposited into such account such funds, investments, money, cash, instruments, securities, rights, proceeds and other property and amounts received by or on behalf of the Pledgors so long as the aggregate sum thereof shall in no event exceed at any time \$500,000; provided, further, that all amounts in excess of \$500,000 shall be deposited directly into a deposit account established and maintained by a Pledgor with a Lender pursuant to a control agreement in favor of the Collateral Agent in form and substance reasonably acceptable to the Collateral Agent. Upon the occurrence and during the continuance of an Event of Default all deposits maintained in the accounts contemplated in this Section 8.5 and all additional moneys and

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other property subsequently maintained by any Pledgor with any Lender or any other financial institution shall be transferred to the Collateral Account. All such deposits in the Collateral Account shall be held by the Collateral Agent as Pledged Collateral for the Secured Obligations or applied to the payment of the Secured Obligations in accordance with Article XI hereof. The costs and expenses (including reasonable attorney's fees) of collection, whether incurred by any Pledgor or the Collateral Agent (or any sub-agent), shall be borne by the Pledgors.

#### ARTICLE IX

##### TRANSFERS AND OTHER LIENS

No Pledgor shall (i) sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral pledged by it hereunder except as permitted by the Credit Agreement, (ii) create or permit to exist any Lien upon or with respect to any of the Pledged Collateral pledged by it hereunder other than Permitted Collateral Liens or (iii) permit any issuer of the Pledged Securities to merge, consolidate or change its legal form, unless (A) all of the outstanding equity interests of the surviving or resulting entity (other than directors', Managing Partners' or Managing Members' qualifying equity interest or interest required by applicable law to be held by a Person other than the Borrower or a Subsidiary) are, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other entity that was merged into or consolidated with such issuer and (B) such Pledgor shall have complied with the applicable provisions of the Credit Agreement.

#### ARTICLE X

##### EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of

all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including, without limitation, instruct-

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ing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than one Business Day after receipt thereof) deposit such amounts into the Collateral Account;

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and there delivered to the Collateral Agent, (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 10.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor (including, without limitation, the accounts contemplated in Article VIII hereof) for application to the Secured Obligations as provided in Article XI hereof;

(vi) Retain and apply the Distributions to the Secured Obligations as provided in Article XI hereof;

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including, without limitation, perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Pledged Collateral; and

(viii) all the rights and remedies of a secured party on default under the UCC, and the Collateral Agent may also in its sole discretion, without notice except as specified in Section 10.2 hereof, sell, assign or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery,

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and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Pledged Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of any Pledged Collateral payable by such Person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely

free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 10.2 Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale shall be required by law, ten days' notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 10.3 Waiver of Notice and Claims. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of any of the Pledged Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article X in the absence of gross negligence, bad faith or willful misconduct. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all Persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

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#### SECTION 10.4 Certain Sales of Pledged Collateral.

(i) Each Pledgor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales.

(ii) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral, to limit purchasers to Persons who will agree, among other things, to acquire such Securities Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

(iii) Notwithstanding the foregoing, each Pledgor shall, upon the occurrence and during the continuance of any Event of Default, at the request of the Collateral Agent, for the benefit of the Collateral Agent, cause any registration, qualification under or compliance with any Federal or state securities law or laws to be effected with respect to all or any part of the Securities Collateral as soon as practicable and at the sole cost and expense of the Pledgors. Each Pledgor will use its best efforts to cause such registration to be effected (and be kept effective) and will use its best efforts to cause such qualification and compliance to be effected (and be kept effective) as may be so requested and as would permit or facilitate the sale and distribution of such Securities Collateral including, without limitation, registration under the Securities Act (or any similar statute then in effect), appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with all other requirements of any Governmental Authority. Each Pledgor shall cause the Collateral Agent to be kept advised in writing as to the progress of each such registration, qualification or compliance and as to the completion thereof, shall furnish to the Collateral Agent such number of prospectuses, offering circulars or other documents incident thereto as the Collateral Agent from time to time may request, and shall indemnify and shall cause the issuer of the Securities Collateral to indemnify the Collateral Agent and all others participating in the distribution of such Securities Collateral against all claims, losses, damages and liabilities caused by any untrue statement (or alleged untrue statement) of a material fact contained therein (or in any related registration statement, notification or the like) or by any omission (or alleged omission) to state therein (or in any related registration statement, notification or the like) a material fact required to be stated therein or necessary to make the statements therein not misleading.

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tion or the like) or by any omission (or alleged omission) to state therein (or in any related registration statement, notification or the like) a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iv) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral, upon written request, the applicable Pledgor shall from time to time furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number of securities included in the Securities Collateral which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

#### SECTION 10.5 No Waiver; Cumulative Remedies.

(i) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent 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 hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(ii) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Pledgors, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 10.6 Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and is continuing, upon the written demand of Collateral Agent, each Pledgor shall execute and deliver to Collateral Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights and such other documents as are necessary or appropriate to carry out the intent and purposes hereof. Within five Business Days of written notice thereafter from Collateral Agent, each Pledgor shall make available to Collateral Agent, to the extent within such Pledgor's power and authority, such personnel in such Pledgor's employ on the date of the Event of Default as Collateral Agent may reasonably designate to permit such Pledgor to continue, directly or indirectly, to produce, advertise and sell the products and services sold by such Pledgor under the registered Patents, Trademarks and/or Copyrights, and such persons shall be available to perform their prior functions on Collateral Agent's behalf.

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## ARTICLE XI

### APPLICATION OF PROCEEDS

The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies as a secured creditor as provided in Article X hereof shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

FIRST, to the payment of all costs and expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, together with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

SECOND, to the payment of all other costs and expenses of such sale, collection or other realization including, without limitation, compensation to the Lenders and their agents and counsel and all costs, liabilities and advances made or incurred by the Lenders in connection therewith, together with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

THIRD, without duplication of amounts applied pursuant to clauses FIRST and SECOND above, to the indefeasible payment in full in cash, pro rata, of (i) interest, principal and other amounts constituting Secured Obligations (other than the obligations arising under the Interest Rate Protection Agreements) in accordance with the terms of the Credit Agreement and (ii) 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 Pledgors or their respective successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses FIRST through THIRD of this Article XI, the Pledgors shall remain liable for any deficiency.

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## ARTICLE XII

### MISCELLANEOUS

#### SECTION 12.1 Concerning Collateral Agent.

(i) The Collateral Agent has been appointed as Collateral Agent pursuant to the Credit Agreement. The actions of the Collateral Agent hereunder are subject to the provisions of the Credit Agreement. The Collateral Agent 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 Pledged Collateral), in accordance with this Agreement and the Credit Agreement. The Collateral Agent 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 Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent.

(ii) The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities

Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any Person with respect to any Pledged Collateral.

(iii) The Collateral Agent 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 Agreement and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Lender, Collateral Agent 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 Collateral Agent in its individual capacity as a Lender. Collateral Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with such Pledgor or any Affiliate of such Pledgor to the same extent as if Collateral Agent were not acting as collateral agent.

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(v) If any item of Pledged Collateral also constitutes collateral granted to Collateral Agent 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, Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

SECTION 12.2 Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If any Pledgor shall fail to perform any covenants contained in this Agreement, (including, without limitation, such Pledgor'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 such Pledgor under any Pledged Collateral) or if any warranty on the part of any Pledgor contained herein shall be breached, the Collateral Agent 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 Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provision of Section 4.18 hereof. Any and all amounts so expended by the Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 12.3 hereof. Neither the provisions of this Section 12.2 nor any action taken by Collateral Agent pursuant to the provisions of this Section 12.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of warranty from constituting an Event of Default. Each Pledgor hereby appoints the Collateral Agent its attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Loan Documents which the Collateral Agent 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. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 12.3 Expenses. Each Pledgor will upon demand pay to the Collateral Agent the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and the reasonable fees and expenses of any experts and agents which the Collateral Agent may reasonably incur in connection with (i) any action, suit or other proceeding affecting the Pledged Collateral or any part thereof commenced, in which action, suit or proceeding the Collateral Agent is made a party or participates or in which the right to use the Pledged Collateral or any part thereof is threatened, or in which it becomes necessary in the reasonable judgment of the Collateral Agent to defend or uphold the Lien hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Pledged Collateral with any requirements of any Governmental Authority or 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 Pledged Collateral, (v) the exercise or enforcement of any of the rights of the Collateral Agent or any Secured Party hereunder or (vi) the failure by any Pledgor to perform or observe any of the provisions hereof. All amounts expended by the Collateral Agent and payable by any Pledgor under this Section 12.3 shall be due upon demand there for (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. Each Pledgor's obligations under this Section 12.3 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit Agreement, any Interest Rate Protection Agreement and the other Loan Documents.

SECTION 12.4 Indemnity.

(i) Indemnity. Each Pledgor agrees to indemnify, pay and hold harmless the Collateral Agent and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Collateral Agent 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 any Pledgor in this Agreement, any Interest Rate Protection Agreement or any other Loan Document) (the "Indemnified Liabilities"); provided, however, that no Pledgor shall have any 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) of 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, each Pledgor 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 Pledgors contained in this Section 12.4 shall survive the termination hereof and the discharge of the Pledgors' other obligations under this Agreement, any Interest Rate Protection Agreement and under the other Loan Documents.

(iii) Reimbursement. Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Pledged Collateral.

SECTION 12.5 Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent 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 Pledgor) 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 Agreement 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 12.6 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 Agreement shall terminate. Upon termination hereof or any release of Pledged Collateral in accordance with the provisions of the Credit Agreement, the Collateral Agent shall, upon the request and at the sole cost and expense of the Pledgors, forthwith assign, transfer and deliver to Pledgor, against receipt and without recourse to or warranty by the Collateral Agent, such of the Pledged Collateral to be released (in the case of a release) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Pledged Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be.

SECTION 12.7 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in

writing and signed by the Collateral Agent. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor 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 Agreement or any other Loan Document, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 12.8 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, as to any Pledgor, addressed to it at the address of the Borrower set forth in the Credit Agreement and as to the Collateral Agent, 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 12.8.

SECTION 12.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS EXCEPT TO THE GREATEST EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF PLEDGED COLLATERAL, ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

SECTION 12.10 CONSENT TO JURISDICTION AND SERVICE OF PROCESS; WAIVER OF JURY TRIAL. ALL JUDICIAL PROCEEDINGS BROUGHT WITH RESPECT TO

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THIS AGREEMENT MAY BE BROUGHT IN THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND APPELLATE COURTS OF ANY THEREOF, AND BY EXECUTION AND DELIVERY HEREOF, EACH PARTY HERETO ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO 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 ITS ADDRESS SET FORTH IN THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE PARTIES HERETO SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY ANY PARTY HERETO REFUSES TO ACCEPT SERVICE, SUCH PARTY 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 THE COLLATERAL AGENT TO BRING PROCEEDINGS AGAINST ANY PARTY HERETO IN THE COURTS OF ANY OTHER JURISDICTION. THE PARTIES HERETO 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 12.11 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 12.12 Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement.

SECTION 12.13 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 Agreement is a part. All agreements between the Pledgors and the Collateral Agent 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 Pledgors 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

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prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances the Pledgors 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 Pledgors. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any extension of credit by the Collateral Agent 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 12.14 Business Days. In the event any time period or any date provided in this Agreement 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 12.15 Relationship. The relationship of Collateral Agent to each of the Pledgors hereunder is strictly and solely that of lender and borrower and pledgor and secured party and nothing contained in the Credit Agreement, this Agreement, 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 Collateral Agent and each of the Pledgors other than as lender and borrower and mortgagor and mortgagee.

SECTION 12.16 Waiver of Stay. Each Pledgor agrees that in the event that such Pledgor or any property or assets of such Pledgor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or such Pledgor 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 Collateral Agent has commenced foreclosure proceedings under this Agreement, the Collateral Agent 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 Collateral Agent as provided in this Agreement or in any other Loan Document.

SECTION 12.17 No Credit for Payment of Taxes or Imposition. Such Pledgor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and such Pledgor 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 Tax on the Pledged Collateral or any part thereof.

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SECTION 12.18 No Claims Against Collateral Agent. Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or any part thereof, nor as giving any Pledgor 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 Collateral Agent 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 12.19 Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

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

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

(iv) any pledge, 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, non-exercise or 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 12.7 hereof; or

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

#### SECTION 12.20 Collateral Agent's Right to Sever Indebtedness.

(i) Each Pledgor acknowledges that (A) the Pledged Collateral 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 other types of property of the Pledgors 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 re-

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spect of such item a separate credit agreement and (C) each Pledgor intends that the Collateral Agent have the same rights with respect to the Pledged Collateral, in any judicial proceeding relating to the exercise of any right or remedy hereunder or otherwise, that the Collateral Agent would have had if each item of Collateral had been pledged or encumbered pursuant to a separate credit agreement and security instrument. In furtherance of such intent, each Pledgor agrees to the greatest extent permitted by law that the Collateral Agent may at any time by notice (an "Allocation Notice") to such Pledgor allocate a portion of the Secured Obligations (the "Allocated Indebtedness") to all or a specified portion of the Pledged Collateral and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to any of the Pledged Collateral, 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 credit obligation of such Pledgor 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 of any judicial proceeding relating to the exercise of any right or remedy hereunder of the Pledged Collateral shall exceed the Allocated Indebtedness, such proceeds shall belong to such Pledgor and shall not be available hereunder to satisfy any Secured Obligations of such Pledgor other than the Allocated Indebtedness. In any action or proceeding to exercise any right or remedy under this Agreement which is commenced after the giving by the Collateral Agent of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and such Pledgor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 12.20, the proceeds received by the Collateral Agent pursuant to this Agreement shall be applied by the Collateral Agent in accordance with the provisions of Article XI hereof.

(ii) Each Pledgor 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 the exercise of any particular right or remedy as provided for herein (by judicial proceedings or otherwise) constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable any further judgment or any other right or remedy provided for herein because the Collateral Agent elected to proceed with the exercise of such initial right or remedy or because of any failure by the Collateral Agent to comply with laws that prescribe conditions to the entitlement to such subsequent judgment or the availability of such subsequent right or remedy. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that such subsequent judgment or action is not available to the Collateral Agent, no Pledgor shall (A) introduce in any other jurisdiction any judgment so holding as a defense to enforcement against such Pledgor 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 and only with respect to the collateral referred to in such judgment.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 12.20 including, without limitation, any amendment to this Agreement, any substitute promissory note or affidavit or certificate of any kind, the Collateral Agent may execute and deliver such instrument as the attorney-in-fact of any Pledgor. 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 12.20 shall be effective only to the maximum extent permitted by law.

SECTION 12.21 Effect. Effective as of the date of this Agreement (the "Effective Date"), this Security Agreement amends and restates the Original Security Agreement in its entirety. It is the intent of the parties hereto that this Security Agreement not constitute a novation and that this Security Agreement replaces in its entirety the Original Security Agreement. After the Effective Date, all references in any Loan Document to the "Security Agreement" shall mean and be a reference to this Agreement.

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IN WITNESS WHEREOF, the Pledgors and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

ACTUANT CORPORATION  
(formerly known as Applied Power Inc.),  
as Borrower and as Pledgor

By: /s/ Andrew Lampereur  
-----  
Name: Andrew Lampereur  
Title: Vice President

ACTUANT INVESTMENTS, INC. (formerly known  
as APW Investments, Inc.)  
APPLIED POWER INVESTMENTS II, INC.  
GB TOOLS AND SUPPLIES, INC. (formerly known  
as Gardner Bender, Inc. and  
APW Tools and Supplies, Inc.)  
CALTERM TAIWAN, INC.  
COLUMBUS MANUFACTURING LLC  
DCW HOLDING INC.  
DEL CITY WIRE CO. INC.  
NEW ENGLAND CONTROLS, INC.  
NIELSEN HARDWARE CORPORATION  
VERSA TECHNOLOGIES INC.  
VT HOLDINGS, INC.  
VT HOLDINGS II, INC.,  
each as Subsidiary Guarantor and as Pledgor

By: /s/ Andrew Lampereur  
-----  
Name: Andrew Lampereur  
Title: Vice President

ENGINEERED SOLUTIONS, LP,  
as Subsidiary Guarantor and as Pledgor  
By Versa Technologies Inc., General Partner

By: /s/ Andrew Lampereur  
-----  
Its: Vice President

By: \_\_\_\_\_  
Name:  
Title:

CREDIT SUISSE FIRST BOSTON,  
as Collateral Agent

By:/s/ Karl M. Studer

-----  
Name: Karl M. Studer  
Title: Director

By:/s/ Mark E. Gleason

-----  
Name: Mark E. Gleason  
Title: Director



THIS AMENDED AND RESTATED INDEMNITY, SUBROGATION and CONTRIBUTION AGREEMENT (together with instruments executed and delivered pursuant to Section 12, this "Agreement") dated as of May 22, 2002, among ACTUANT CORPORATION, a Wisconsin corporation (formerly known as Applied Power Inc.) (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 Amended and Restated Credit Agreement dated as of May 22, 2002 (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, WACHOVIA BANK, NATIONAL ASSOCIATION as syndication agent (in such capacity, the "Syndication Agent"), and ING CAPITAL LLC as documentation agent (in such capacity, the "Documentation Agent"), (b) the Subsidiary Guarantee Agreement dated as of May 22, 2002 (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 Guarantor 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

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(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.

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

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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 executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 11. Rules of Interpretation. The rules of interpretation specified in Section 1.02 of the Credit Agreement shall be applicable to this Agreement.

SECTION 12. Additional Subsidiary Guarantors. Subject to the provisions of Section 5.11(b) 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 such a Subsidiary. Upon execution and delivery, after the date hereof, by the Collateral Agent and such a Subsidiary of an instrument in the form of Annex 1 hereto, such Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor hereunder. The execution and delivery of any instrument adding an additional Subsidiary Guarantor as a party to this Agreement shall not require the consent of any 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first appearing above.

ACTUANT CORPORATION

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By: /s/ Terence M. Braatz

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Name: Terence M. Braatz  
Title: Treasurer

EACH OF THE SUBSIDIARIES LISTED ON  
SCHEDULE I HERETO

By: /s/ Terence M. Braatz

-----  
Name: Terence M. Braatz  
Title: Treasurer

CREDIT SUISSE FIRST BOSTON, as  
Collateral Agent

By: /s/ Karl Studer

-----  
Name: Karl Studer  
Title: Director

By: /s/ Mark Gleason

-----  
Name: Mark Gleason  
Title: Director

THIS AMENDED AND RESTATED SUBSIDIARY GUARANTEE AGREEMENT (together with instruments executed and delivered pursuant to Section 20 hereof, this "Agreement") dated as of May 22, 2002, among each of the subsidiaries of ACTUANT CORPORATION, a Wisconsin corporation (formerly known as Applied Power Inc.) (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 Amended and Restated Credit Agreement dated as of May 22, 2002 (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, WACHOVIA BANK, NATIONAL ASSOCIATION as syndication agent (in such capacity, the "Syndication Agent"), and ING 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 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 Obligations 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,

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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 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.

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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.

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

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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.

(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

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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 unmaturing. 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.

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: /s/ Terence M. Braatz  
-----  
Name: Terence M. Braatz  
Title: Treasurer

CREDIT SUISSE FIRST BOSTON, as  
Collateral Agent

By: /s/ Karl Studer  
-----  
Name: Karl Studer  
Title: Director

By: /s/ Mark Gleason  
-----  
Name: Mark Gleason  
Title: Director