

## SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

(MARK ONE)

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2000

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

COMMISSION FILE NUMBER 1-10596

ESCO TECHNOLOGIES INC.  
(formerly named ESCO Electronics Corporation)  
(Exact name of registrant as specified in its charter)

MISSOURI  
(State or other jurisdiction of  
incorporation or organization)

43-1554045  
(I.R.S. Employer  
Identification No.)

8888 LADUE ROAD, SUITE 200  
ST. LOUIS, MISSOURI  
(Address of principal executive offices)

63124-2090  
(Zip Code)

Registrant's telephone number, including area code:(314) 213-7200

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 X No

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The number of shares of the registrant's common stock outstanding at July 31, 2000 was 12,312,747.

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

ESCO TECHNOLOGIES INC. AND SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF OPERATIONS  
 (Unaudited)  
 (Dollars in thousands, except per share amounts)

|                                              | Three Months Ended<br>June 30, |               |
|----------------------------------------------|--------------------------------|---------------|
|                                              | -----<br>2000<br>-----         | 1999<br>----- |
| Net sales                                    | \$79,235                       | 113,978       |
| Costs and expenses:                          |                                |               |
| Cost of sales                                | 54,536                         | 86,027        |
| Selling, general and administrative expenses | 16,750                         | 18,934        |
| Interest expense                             | 209                            | 1,715         |
| Other, net                                   | 1,873                          | 989           |
| Total costs and expenses                     | 73,368                         | 107,665       |
| Earnings before income taxes                 | 5,867                          | 6,313         |
| Income tax expense                           | 2,159                          | 2,241         |
| Net earnings                                 | 3,708                          | 4,072         |
| Earnings per share: - Basic                  | \$ .30                         | .33           |
| - Diluted                                    | .29                            | .32           |
|                                              | =====                          | =====         |

See accompanying notes to consolidated financial statements.

ESCO TECHNOLOGIES INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF OPERATIONS  
(Unaudited)  
(Dollars in thousands, except per share amounts)

|                                                       | Nine Months Ended<br>June 30, |          |
|-------------------------------------------------------|-------------------------------|----------|
|                                                       | 2000                          | 1999     |
| Net sales                                             | 215,162                       | 298,385  |
| Costs and expenses:                                   |                               |          |
| Cost of sales                                         | 149,259                       | 222,504  |
| Selling, general and administrative expenses          | 45,188                        | 54,748   |
| Interest (income) expense                             | (99)                          | 5,151    |
| Other, net                                            | 4,913                         | 4,179    |
| Gain on sale of property                              | (2,239)                       | --       |
| Total costs and expenses                              | 197,022                       | 286,582  |
| Earnings before income taxes                          | 18,140                        | 11,803   |
| Income tax expense                                    | 5,860                         | 4,169    |
| Net earnings before accounting change                 | 12,280                        | 7,634    |
| Cumulative effect of accounting change,<br>net of tax | --                            | (25,009) |
| Net earnings (loss)                                   | 12,280                        | (17,375) |
| Earnings (loss) per share:                            |                               |          |
| Earnings before accounting change:                    |                               |          |
| - Basic                                               | \$ 1.00                       | .62      |
| - Diluted                                             | .97                           | .61      |
| Net earnings (loss) - Basic                           | \$ 1.00                       | (1.41)   |
| - Diluted                                             | .97                           | (1.41)   |

See accompanying notes to consolidated financial statements

ESCO TECHNOLOGIES INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS  
(Dollars in thousands)

|                                                                                                                              | June 30,<br>2000     | September 30,<br>1999 |
|------------------------------------------------------------------------------------------------------------------------------|----------------------|-----------------------|
|                                                                                                                              | -----<br>(Unaudited) | -----                 |
| <b>ASSETS</b>                                                                                                                |                      |                       |
| Current assets:                                                                                                              |                      |                       |
| Cash and cash equivalents                                                                                                    | \$ 10,510            | 87,709                |
| Accounts receivable, less allowance for doubtful accounts of \$966 and \$574, respectively                                   | 55,124               | 38,669                |
| Costs and estimated earnings on long-term contracts, less progress billings of \$15,769 and \$11,778, respectively           | 4,552                | 4,019                 |
| Inventories                                                                                                                  | 49,709               | 39,590                |
| Other current assets                                                                                                         | 4,992                | 3,559                 |
|                                                                                                                              | -----                | -----                 |
| Total current assets                                                                                                         | 124,887              | 173,546               |
|                                                                                                                              | -----                | -----                 |
| Property, plant and equipment, at cost                                                                                       | 109,564              | 109,763               |
| Less accumulated depreciation and amortization                                                                               | 40,389               | 38,445                |
|                                                                                                                              | -----                | -----                 |
| Net property, plant and equipment                                                                                            | 69,175               | 71,318                |
| Excess of cost over net assets of purchased businesses, less accumulated amortization of \$8,442 and \$6,631, respectively   | 89,693               | 68,950                |
| Deferred tax assets                                                                                                          | 41,351               | 44,783                |
| Other assets                                                                                                                 | 21,863               | 19,788                |
|                                                                                                                              | -----                | -----                 |
|                                                                                                                              | \$ 346,969           | 378,385               |
|                                                                                                                              | =====                | =====                 |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>                                                                                  |                      |                       |
| Current liabilities:                                                                                                         |                      |                       |
| Short-term borrowings and current maturities of long-term debt                                                               | \$ 18,000            | 20,598                |
| Accounts payable                                                                                                             | 33,134               | 26,339                |
| Advance payments on long-term contracts, less costs incurred of \$1,898 and \$479, respectively                              | 2,778                | 682                   |
| Accrued expenses and other current liabilities                                                                               | 25,630               | 30,598                |
|                                                                                                                              | -----                | -----                 |
| Total current liabilities                                                                                                    | 79,542               | 78,217                |
|                                                                                                                              | -----                | -----                 |
| Other liabilities                                                                                                            | 10,282               | 9,583                 |
| Long-term debt                                                                                                               | 830                  | 41,896                |
|                                                                                                                              | -----                | -----                 |
| Total liabilities                                                                                                            | 90,654               | 129,696               |
|                                                                                                                              | -----                | -----                 |
| Commitments and contingencies                                                                                                | --                   | --                    |
| Shareholders' equity:                                                                                                        |                      |                       |
| Preferred stock, par value \$.01 per share, authorized 10,000,000 shares                                                     | --                   | --                    |
| Common stock, par value \$.01 per share, authorized 50,000,000 shares; issued 13,204,197 and 12,782,663 shares, respectively | 132                  | 128                   |
| Additional paid-in capital                                                                                                   | 205,045              | 201,719               |
| Retained earnings since elimination of deficit at September 30, 1993                                                         | 65,003               | 52,723                |
| Accumulated other comprehensive loss                                                                                         | (4,134)              | (1,870)               |
|                                                                                                                              | -----                | -----                 |
|                                                                                                                              | 266,046              | 252,700               |
| Less treasury stock, at cost; 890,625 and 404,625 common shares, respectively                                                | (9,731)              | (4,011)               |
|                                                                                                                              | -----                | -----                 |
| Total shareholders' equity                                                                                                   | 256,315              | 248,689               |
|                                                                                                                              | -----                | -----                 |
|                                                                                                                              | \$ 346,969           | 378,385               |
|                                                                                                                              | =====                | =====                 |

See accompanying notes to consolidated financial statements.

ESCO TECHNOLOGIES INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited)  
(Dollars in thousands)

|                                                                                               | Nine Months Ended<br>June 30, |          |
|-----------------------------------------------------------------------------------------------|-------------------------------|----------|
|                                                                                               | 2000                          | 1999     |
| Cash flows from operating activities:                                                         |                               |          |
| Net earnings (loss)                                                                           | \$ 12,280                     | (17,375) |
| Adjustments to reconcile net earnings (loss) to<br>net cash provided by operating activities: |                               |          |
| Depreciation and amortization                                                                 | 10,837                        | 13,506   |
| Changes in operating working capital,<br>net of accounting change                             | (19,132)                      | (19,582) |
| Effect of accounting change, net of tax                                                       | --                            | 25,009   |
| Other                                                                                         | 1,618                         | 5,885    |
|                                                                                               | 5,603                         | 7,443    |
| Cash flows from investing activities:                                                         |                               |          |
| Capital expenditures                                                                          | (7,817)                       | (6,615)  |
| (Acquisition) divestiture of businesses, less cash<br>acquired                                | (28,231)                      | --       |
|                                                                                               | (36,048)                      | (6,615)  |
| Cash flows from financing activities:                                                         |                               |          |
| Net increase in short-term borrowings                                                         | 5,494                         | 8,000    |
| Proceeds from long-term debt                                                                  | 80                            | 96       |
| Principal payments on long-term debt                                                          | (49,238)                      | (6,303)  |
| Purchases of common stock into treasury                                                       | (5,765)                       | (1,562)  |
| Other                                                                                         | 2,675                         | 193      |
|                                                                                               | (46,754)                      | 424      |
| Net (decrease) increase in cash and cash equivalents                                          | (77,199)                      | 1,252    |
| Cash and cash equivalents, beginning of period                                                | 87,709                        | 4,241    |
|                                                                                               | \$ 10,510                     | 5,493    |
|                                                                                               | \$ 10,510                     | 5,493    |

See accompanying notes to consolidated financial statements.

ESCO TECHNOLOGIES INC. AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
 (Unaudited)

1. BASIS OF PRESENTATION

The accompanying consolidated financial statements, in the opinion of management, include all adjustments, consisting only of normal recurring accruals, necessary for a fair presentation of the results for the interim periods presented. The consolidated financial statements are presented in accordance with the requirements of Form 10-Q and consequently do not include all the disclosures required by generally accepted accounting principles. For further information refer to the consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended September 30, 1999. Certain prior year amounts have been reclassified to conform to the fiscal 2000 presentation.

The results for the three and nine month periods ended June 30, 2000 are not necessarily indicative of the results for the entire 2000 fiscal year.

Effective July 10, 2000, the Company changed its name from ESCO Electronics Corporation to ESCO Technologies Inc.

On September 30, 1999, the Company sold its last major defense business, Systems & Electronics Inc. (SEI) for \$85 million in cash, less working capital adjustments. The prior year amounts include the operating results of SEI for the entire year. The Company has provided a reconciliation of reported earnings to "adjusted" earnings within "Item 2. Management's Discussion and Analysis (MD&A)" noted below.

2. EARNINGS (LOSS) PER SHARE

Basic earnings per share is calculated using the weighted average number of common shares outstanding during the period. Diluted earnings per share is calculated using the weighted average number of common shares outstanding during the period plus shares issuable upon the assumed exercise of dilutive common share options and performance shares by using the treasury stock method. The number of shares used in the calculation of earnings (loss) per share for each period presented is as follows (in thousands):

|                                            | Three Months Ended<br>June 30, |                        | Nine Months Ended<br>June 30, |                        |
|--------------------------------------------|--------------------------------|------------------------|-------------------------------|------------------------|
|                                            | -----<br>2000<br>-----         | -----<br>1999<br>----- | -----<br>2000<br>-----        | -----<br>1999<br>----- |
| Weighted Average Shares                    |                                |                        |                               |                        |
| Outstanding - Basic                        | 12,305                         | 12,357                 | 12,311                        | 12,318                 |
| Dilutive Options and<br>Performance Shares | 386                            | 352                    | 337                           | 249                    |
|                                            | -----                          | -----                  | -----                         | -----                  |
| Adjusted Shares- Diluted                   | 12,691                         | 12,709                 | 12,648                        | 12,567                 |
|                                            | =====                          | =====                  | =====                         | =====                  |

Options to purchase approximately 92,000 shares of common stock at prices ranging from \$15.72-\$19.22 per share and options to purchase approximately 689,000 shares of common stock at approximately \$10.78 - \$19.22 were outstanding during the nine month periods ended June 30, 2000 and 1999, respectively, but were not included in the respective computations of diluted EPS because the options' exercise price was greater than the average market price of the common shares during such nine month periods. These options expire in various periods through 2010. Approximately 166,000 performance shares were outstanding but unearned at June 30, 1999, and therefore, were not included in the computation of diluted EPS.

## 3. INVENTORIES

Inventories consist of the following (dollars in thousands):

|                                                   | June 30,<br>2000 | September 30,<br>1999 |
|---------------------------------------------------|------------------|-----------------------|
|                                                   | -----            | -----                 |
| Finished goods                                    | \$12,711         | 11,387                |
| Work in process, including<br>long-term contracts | 18,636           | 14,517                |
| Raw materials                                     | 18,362           | 13,686                |
|                                                   | -----            | -----                 |
| Total inventories                                 | \$49,709         | 39,590                |
|                                                   | =====            | =====                 |

The increase in inventories of approximately \$10.1 million is primarily due to the current year acquisitions which contributed \$6.4 million of the increase.

## 4. CHANGE IN ACCOUNTING PRINCIPLE

During the first quarter of fiscal 1999, the Company adopted the provisions of Statement of Position (SOP) 98-5, "Reporting on the Costs of Start-up Activities". This SOP provides guidance on accounting for start-up activities, including precontract costs and organization costs. The adoption of SOP 98-5 resulted in a non-cash, after-tax charge of approximately \$25 million, which was recognized as a cumulative effect of an accounting change in the prior year first quarter ended December 31, 1998.

## 5. COMPREHENSIVE INCOME (LOSS)

Comprehensive income for the three-month periods ended June 30, 2000 and 1999 was \$2.9 million and \$4.0 million, respectively. Comprehensive income (loss) for the nine-month periods ended June 30, 2000 and 1999 was \$10.0 million and (\$18.5) million, respectively. The Company's comprehensive income and loss is impacted only by foreign currency translation adjustments. During the first nine months of fiscal 2000, the foreign currency adjustments were primarily impacted by the fluctuations in certain European currencies.

## 6. BUSINESS SEGMENT INFORMATION

The Company is organized based on the products and services that it offers.

| (\$ in millions)        | Three Months ended<br>June 30, |                        |
|-------------------------|--------------------------------|------------------------|
|                         | -----<br>2000<br>-----         | -----<br>1999<br>----- |
| NET SALES               |                                |                        |
| Filtration/Fluid Flow   | \$44.8                         | 43.5                   |
| Test                    | 21.4                           | 8.2                    |
| Communications          | 10.7                           | 8.6                    |
| Other                   | 2.3                            | 2.9                    |
| Divested Business       | --                             | 50.8                   |
|                         | -----                          | -----                  |
| Consolidated totals     | \$79.2                         | 114.0                  |
|                         | =====                          | =====                  |
| OPERATING PROFIT (LOSS) |                                |                        |
| Filtration/Fluid Flow   | \$ 4.1                         | 4.0                    |
| Test                    | 2.6                            | .7                     |
| Communications          | 2.4                            | 1.1                    |
| Other                   | (1.2)                          | (1.5)                  |
| Divested Business       | --                             | 4.7                    |
|                         | -----                          | -----                  |
| Consolidated totals     | \$ 7.9                         | 9.0                    |
|                         | =====                          | =====                  |

| (\$ in millions)        | Nine Months ended<br>June 30, |       |
|-------------------------|-------------------------------|-------|
|                         | 2000                          | 1999  |
| NET SALES               |                               |       |
| Filtration/Fluid Flow   | \$133.8                       | 124.3 |
| Test                    | 40.5                          | 25.4  |
| Communications          | 31.9                          | 18.8  |
| Other                   | 9.0                           | 10.3  |
| Divested Business       | --                            | 119.6 |
|                         | -----                         | ----- |
| Consolidated totals     | \$215.2                       | 298.4 |
|                         | =====                         | ===== |
| OPERATING PROFIT (LOSS) |                               |       |
| Filtration/Fluid Flow   | \$ 12.1                       | 10.8  |
| Test                    | 4.5                           | 2.4   |
| Communications          | 6.7                           | 1.7   |
| Other                   | (2.6)                         | (2.3) |
| Divested Business       | --                            | 8.5   |
|                         | -----                         | ----- |
| Consolidated totals     | \$ 20.7                       | 21.1  |
|                         | =====                         | ===== |

#### 7. ACQUISITIONS

Effective April 9, 2000, the Company acquired all of the outstanding common stock of The Curran Company (doing business as Lindgren RF Enclosures) and Lindgren, Inc. (doing business as Lindgren-Rayproof) (collectively "Lindgren") for approximately \$22 million in cash plus additional consideration based upon the future performance of the Company. The Company accounted for the transaction as a purchase. Lindgren has annual sales in excess of \$40 million and is a leading supplier of radio frequency (RF) shielding products and components used by manufacturers of medical equipment, communications systems and electronic products. Lindgren is headquartered near Chicago, Illinois and operates facilities in Wisconsin, Florida, the United Kingdom and Singapore. The operating results for Lindgren, since the date of acquisition, are included within the Company's Test segment. The Company recorded approximately \$15 million of goodwill as a result of the transaction, subject to post-closing adjustments and finalization of the purchase accounting entries. These post-closing items are expected to be completed prior to September 30, 2000.

Effective June 2, 2000, the Company purchased Holaday Industries, Inc. ("Holaday") for approximately \$4 million in cash. Holaday is a leading supplier of specialty measurement probes to the electromagnetic compatibility (EMC) test, health and safety, and microwave markets. The business, headquartered in Eden Prairie, Minnesota, has annual sales of approximately \$5.5 million. The operating results for Holaday, since the date of acquisition, are included within the Company's Test segment. The purchase is subject to final post-closing adjustments which will be completed prior to September 30, 2000.



ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

RECONCILIATION OF ADJUSTED NET EARNINGS - 1999

The following table is not intended to present prior year net earnings as defined within generally accepted accounting principles (GAAP), and is presented for informational purposes only. The table is comparable to the full year table presented in the 1999 Annual Report to Shareholders (page 11).

The table provides a reconciliation between the 1999 reported financials and what Management believes the 1999 operating results may have been after removing certain nonrecurring items and assuming that all of the actions taken during 1999 to reposition the business were complete at the beginning of the period. Management believes the estimated 1999 adjusted operating results provide a meaningful presentation for purposes of analyzing ESCO's ongoing financial performance.

| (\$ in millions, rounded) | Three Months Ended June 30, 1999 |                              |                           |          |
|---------------------------|----------------------------------|------------------------------|---------------------------|----------|
|                           | Reported                         | (a)<br>Elimination<br>of SEI | (b)<br>Adjusting<br>Items | Adjusted |
| Net sales                 | \$114.0                          | 50.8                         | --                        | \$ 63.2  |
| Cost of sales             | 86.0                             | 40.6                         | (.2)                      | 45.2     |
| SG&A expenses             | 19.0                             | 5.4                          | .1                        | 13.7     |
| Interest expense (income) | 1.7                              | .1                           | (2.3)                     | (.7)     |
| Other, net                | 1.0                              | .1                           | --                        | .9       |
| Total costs and expenses  | 107.7                            | 46.2                         | (2.4)                     | 59.1     |
| Earnings before tax       | 6.3                              | 4.6                          | 2.4                       | 4.1      |
| Income tax expense        | 2.2                              | --                           | (.8)                      | 1.4      |
| Net earnings              | 4.1                              | 4.6                          | 3.2                       | 2.7      |
|                           | =====                            | =====                        | =====                     | =====    |

| (\$ in millions, rounded)                          | Nine Months Ended June 30, 1999 |                              |                           |          |
|----------------------------------------------------|---------------------------------|------------------------------|---------------------------|----------|
|                                                    | Reported                        | (a)<br>Elimination<br>of SEI | (b)<br>Adjusting<br>Items | Adjusted |
| Net sales                                          | \$298.4                         | 119.6                        | --                        | \$178.8  |
| Cost of sales                                      | 222.5                           | 94.7                         | (.6)                      | 127.2    |
| SG&A expenses                                      | 54.8                            | 16.4                         | .6                        | 39.0     |
| Interest expense (income)                          | 5.1                             | .4                           | (6.1)                     | (1.4)    |
| Other, net                                         | 4.2                             | .2                           | (.2)                      | 3.8      |
| Total costs and expenses                           | 286.6                           | 111.7                        | (6.3)                     | 168.6    |
| Earnings before tax                                | 11.8                            | 7.9                          | 6.3                       | 10.2     |
| Income tax expense                                 | 4.2                             | --                           | (.6)                      | 3.6      |
| Net earnings before accounting change              | 7.6                             | 7.9                          | 6.9                       | 6.6      |
| Cumulative effect of accounting change, net of tax | (25.0)                          | --                           | 25.0                      | --       |
| Net earnings (loss)                                | \$(17.4)                        | 7.9                          | 31.9                      | \$ 6.6   |
|                                                    | =====                           | =====                        | =====                     | =====    |

(a) Represents the operations of SEI, which were included in the ESCO consolidated 1999 GAAP reported results of operations for the third quarter and first nine months of fiscal 1999, respectively.

(b) Represents the adjusting items as explained in detail in the 1999 Annual Report to Shareholders (page 11), including: the operating

results of Rantec's microwave business which has been sold; the adjustment to the corporate office operating expenses resulting from the 1999 actions; the estimated net interest impact of the SEI transaction proceeds; and any related tax adjustment.

## RESULTS OF OPERATIONS

## NET SALES

Net sales of \$79.2 million for the third quarter of fiscal 2000 decreased \$34.8 million from reported net sales of \$114.0 million for the third quarter of fiscal 1999 due to the divestiture of SEI. The prior year amount included SEI sales of \$50.8 million. Excluding SEI from the prior year amounts, third quarter sales increased \$16.0 million, or 25.3% over 1999 "adjusted" third quarter sales of \$63.2 million.

Net sales decreased \$83.2 million, or 27.9% to \$215.2 million for the first nine months of fiscal 2000 from reported net sales of \$298.4 million for the first nine months of fiscal 1999 due to the divestiture of SEI. The prior year amount included SEI sales of \$119.6 million. Excluding SEI from the prior year amounts, sales for the first nine months of fiscal 2000 increased \$36.4 million, or 20.4% over 1999 "adjusted" nine months sales of \$178.8 million.

## Filtration/Fluid Flow

Net sales of \$44.8 million in the third quarter of fiscal 2000 were 3.0% higher than prior year third quarter sales of \$43.5 million. Net sales increased \$9.5 million, or 7.6% to \$133.8 million in the first nine months of fiscal 2000 from prior year nine months sales of \$124.3 million. During the third quarter of fiscal 2000, the Company experienced a reduction in sales volumes of its blood filters and a temporary slowdown in the sales of its disposable water filter cartridges. The sales increase during the first nine months of fiscal 2000 compared to prior year was mainly due to new product introductions and increases in microfiltration sales.

## Test

Net sales increased \$13.2 million or 161% to \$21.4 million in the third quarter of fiscal 2000 from \$8.2 million for the third quarter of fiscal 1999. Net sales of \$40.5 million for the first nine months increased \$15.1 million or 59.4% in fiscal 2000 over the prior period net sales of \$25.4 million. The increase in both periods is primarily due to the Lindgren acquisition, which contributed approximately \$10 million in sales in the fiscal 2000 third quarter, as well as additional revenue related to the General Motors contract to design and build an electromagnetic compatibility (EMC) test complex.

## Communications

For the third quarter of fiscal 2000, net sales of \$10.7 million were 24.4% higher than the \$8.6 million of sales recorded in the third quarter of fiscal 1999. Net sales of \$31.9 million for the first nine months of fiscal 2000 were 69.7% higher than the \$18.8 million of sales recorded in the prior year period. The significant increase in both periods is the result of significantly higher shipments to the Puerto Rico Electric Power Authority (PREPA) and Wisconsin Public Service Corporation (WPS) to provide Automatic Meter Reading (AMR) systems.

## Other

Sales were \$2.3 million in the third quarter of fiscal 2000 and \$2.9 million in the prior year period. In the first nine months of fiscal 2000, sales were \$9.0 million compared to \$10.3 million in the prior year period. The decreases are due to the sale of the Rantec microwave antenna business, which occurred in February 2000. Sales for the Rantec microwave antenna business were approximately \$2.1 million and \$4.9 million in fiscal 2000 and 1999, respectively.

## ORDERS AND BACKLOG

Firm order backlog was \$164.2 million at June 30, 2000, compared with \$142.9 million at September 30, 1999. Orders totaling \$222.5 million were received in the first nine months of fiscal 2000, with the majority of the orders relating to Filtration/Fluid Flow products. In addition, the recent acquisitions of Lindgren and Eaton Space Products contributed approximately \$20.3 million in backlog. The February 2000 sale of the Rantec microwave business resulted in a decrease to backlog of \$6.3 million.

## GROSS PROFIT

The gross profit margin increased to 31.2% in the third quarter of fiscal 2000 from 24.5% in the third quarter of fiscal 1999 as reported. The "adjusted"

gross profit margin for the third quarter of fiscal 1999 was 28.5%. The gross profit margin was 30.6% in the first nine months of fiscal 2000 and 25.4% in the first nine months of fiscal 1999 as reported. The fiscal 1999 "adjusted" gross profit margin was 28.9%.

The gross profit margin increased in both fiscal 2000 periods compared to the reported 1999 results primarily due to the lower margins in 1999 related to the former defense subsidiary, SEI. Gross profit margin increased in both fiscal 2000 periods compared to "adjusted" 1999 results due to operational improvements in all three primary operating segments including favorable changes in sales mix and successful cost containment programs.

#### SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

Selling, general and administrative (SG&A) expenses for the third quarter of fiscal 2000 were \$16.8 million, or 21.1% of net sales, compared with \$18.9 million, or 16.6% of net sales for the prior year period. "Adjusted" SG&A expense was \$13.7 million, or 21.7% of net sales for the same period a year ago. The percentage decrease from "adjusted" 1999 SG&A expenses is the result of favorable sales leverage achieved on the higher sales volume.

For the first nine months of fiscal 2000, SG&A expenses were \$45.2 million, or 21.0% of net sales, compared with \$54.7 million, or 18.3% of net sales for the prior year period. "Adjusted" SG&A expense was \$39.0 million, or 21.8% of net sales for the same period a year ago. The decrease as a percent of sales from "adjusted" 1999 SG&A expenses is due to the favorable sales leverage achieved on the higher sales volume.

#### OPERATING PROFIT

Operating profit was \$7.9 million (10.0% of sales) for the third quarter of fiscal 2000 compared to reported operating profit of \$9.0 million (7.9% of sales) for the third quarter of fiscal 1999. The prior year operating profit amount included \$4.7 million related to SEI. Current year third quarter operating profit increased \$3.6 million, or 83.7% over prior year "adjusted" third quarter operating profit of \$4.3 million.

Operating profit was \$20.7 million (9.6% of sales) for the first nine months of fiscal 2000 compared to reported operating profit of \$21.1 million (7.1% of sales) for the first nine months of fiscal 1999. The prior year operating profit amount included \$8.5 million related to SEI. Current year nine months operating profit increased \$8.1 million, or 64.3% over prior year "adjusted" operating profit of \$12.6 million.

#### Filtration/Fluid Flow

Operating profit increased to \$4.1 million (9.2% of sales) in third quarter of fiscal 2000 from the \$4.0 million (9.2% of sales) of operating profit in the prior year period. Operating profit of \$12.1 million increased 12.0% in the first nine months of fiscal 2000 over the \$10.8 million of operating profit in the prior year period. Operating profit has remained consistent at 9.2% of sales in the third quarter of fiscal 2000 as compared to prior year mainly due to the temporary slowdown in sales of disposable water filter cartridges and blood filters as well as increased investments in new product start-ups.

#### Test

Third quarter operating profit increased \$1.9 million, or 271% to \$2.6 million from \$.7 million in the prior year quarter. Operating profit was \$4.5 million in the first nine months of fiscal 2000 compared to \$2.4 million in the prior year period. Operating profit for the current quarter and year-to-date increased primarily due to the Lindgren acquisition, which contributed approximately \$1.0 million, as well as additional profit related to the General Motors contract to design and build an EMC test complex.

#### Communications

Third quarter operating profit of \$2.4 million in fiscal 2000 was \$1.3 million (118%) higher than the \$1.1 million of operating profit in the third quarter of fiscal 1999. For the first nine months of fiscal 2000, operating profit increased \$5.0 million (294%) to \$6.7 million from \$1.7 million in the prior year period. The large increase is the result of significantly higher shipments to PREPA and WPS as described above.

## Other

Operating loss was (\$1.2) million and (\$2.6) million for the three and nine-month periods ended June 30, 2000, respectively, compared to (\$1.5) million and (\$2.3) million for the respective prior year periods. The increase in the current nine month period operating loss primarily related to the operations of the Rantec microwave antenna business that was sold in February 2000.

## INTEREST (INCOME) EXPENSE

Interest expense was \$.2 million and \$1.7 million for the three-month period ended June 30, 2000 and 1999, respectively. Interest income was \$.1 million for the nine-month period ended June 30, 2000 compared to interest expense of \$5.2 million for the nine-month period ended June 30, 1999. The decline in interest expense for the nine-month period ended June 30, 2000 is due to the lower debt level in the current year. All outstanding debt, excluding approximately \$.8 million of foreign debt, was repaid in October 1999 with the proceeds from the sale of SEI.

## OTHER COSTS AND EXPENSES, NET

Other costs and expenses, net, were \$1.9 million and \$4.9 million for the three and nine-month periods ended June 30, 2000, respectively, compared to \$1.0 million and \$4.2 million for the three and nine-month periods ended June 30, 1999, respectively. The amount for the first nine months of fiscal 2000 included amortization expense of \$2.8 million related to goodwill and patents. During the third quarter of fiscal 2000, the Company recorded a charge of approximately \$.7 million to write-off an investment in a third party start-up company who has filed for bankruptcy. This investment had been recorded within the Company's Test segment. The Company will be a distributor of the products.

## GAIN ON THE SALE OF PROPERTY

In the first quarter of fiscal 2000, the Company recorded a gain of \$2.2 million (or \$.18 per share) on the sale of the Riverhead, New York property, used by the Company's former Hazeltine subsidiary. The property was sold for \$2.6 million, consisting of \$.5 million in cash and a \$2.1 million interest-bearing, 18-month note receivable.

## INCOME TAX EXPENSE

The third quarter fiscal 2000 effective income tax rate was 36.8% compared to 35.5% in the third quarter of fiscal 1999. The effective income tax rate in the first nine months of fiscal 2000 was 32.3% compared to 35.3% in the prior year period. The tax rate for the first nine months of fiscal 2000 was favorably impacted by the \$2.2 million gain on the sale of property, in which the Company recognized minimal tax expense. Management estimates the annual effective tax rate for fiscal 2000 to be approximately 36%.

## FINANCIAL CONDITION

Working capital decreased to \$45.3 million at June 30, 2000 from \$95.3 million at September 30, 1999. The decrease is primarily due to the use of cash to repay all of the debt outstanding at September 30, 1999, except for the \$0.8 million of foreign debt outstanding at June 30, 2000. During the first nine months of fiscal 2000, accounts receivable increased by \$16.5 million as a result of the recent acquisitions and sales growth of the business. Costs and estimated earnings on long-term contracts and inventories increased in the aggregate by \$10.7 million primarily due to the recent acquisitions, General Motors contract to design and build an EMC test complex, and safety stock related to the West Coast plant consolidation. Accounts payable and accrued expenses increased by \$1.8 million mainly due to the recent acquisitions offset by the payments related to the September 30, 1999 divestiture of SEI.

Net cash provided by operating activities was \$5.6 million in the first nine months of fiscal 2000 compared to \$7.4 million in the same period of fiscal 1999. The cash provided by operating activities in fiscal 2000 was positively impacted by the Company's recent acquisitions which was offset by divestiture related (SEI) payments and the above mentioned inventory requirements.

Net cash used by investing activities was \$36.0 million in the first nine months of fiscal 2000 compared to \$6.6 million in the same period of fiscal 1999. The increase in net cash used by investing activities is mainly due to the acquisitions of Lindgren, Eaton Space Products and Holaday.

Capital expenditures were \$7.8 million in the first nine months of fiscal 2000 compared with \$6.6 million in the comparable period of fiscal 1999. Major expenditures in the current period included manufacturing equipment used in the filtration / fluid flow business.

On April 11, 2000, the Company entered into a new \$75 million reducing revolving credit facility replacing its previous \$40 million credit facility. The revolving credit facility is available for direct borrowings and/or the issuance of letters of credit. The maturity of the new bank credit facility is April 11, 2005. The new credit facility is provided by a group of five banks, led by Bank of America. At June 30, 2000, the Company had approximately \$50 million available to borrow under the credit facility.

Cash flow from operations and borrowings under the bank credit facility are expected to provide adequate resources to meet the Company's capital requirements and operational needs for the foreseeable future.

During the first nine months of fiscal 2000, the Company repurchased approximately 500,000 shares of ESCO common stock as part of its ongoing open market repurchase program. Since announcing the program in fiscal 1999, the Company has repurchased approximately 700,000 shares of the 1.3 million shares authorized under the current program. In June 2000, the Company initiated an odd lot buy back program which extends through August 2000. The Company anticipates that 25,000 shares will be repurchased under the program for a total cost of approximately \$.5 million.

#### FORWARD LOOKING STATEMENTS

Statements in this report that are not strictly historical are "forward looking" statements within the meaning of the safe harbor provisions of the federal securities laws. Investors are cautioned that such statements are only predictions, and speak only as of the date of this report. Actual results may differ materially due to risks and uncertainties, which are described in the Company's Form 10-K for fiscal year 1999 and on page 41 of the 1999 Annual Report to Shareholders.

#### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Market risks relating to the Company's operations result primarily from changes in interest rates and changes in foreign currency exchange rates. Based on the current debt structure, the exposure to interest rate risk is not material. The Company is subject to foreign currency exchange rate risk relating to receipts from customers and payments to suppliers in foreign currencies. The Company hedges foreign currency commitments by purchasing foreign currency forward contracts.

## PART II OTHER INFORMATION

## ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.

## a) Exhibits.

| Exhibit<br>Number |                                                                                                                                                                                       |                                                                                                                             |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 3(a)              | Restated Articles of Incorporation                                                                                                                                                    | Incorporated by reference to Form 10-K for the fiscal year ended September 30, 1999 at Exhibit 3(a)                         |
| 3(b)              | Amended Certificate of Designation, Preferences and Rights of Series A Participating Cumulative Preferred Stock of the Registrant                                                     | Incorporated by reference to Form 10-Q for the quarter ended March 31, 2000 at Exhibit 4(e)                                 |
| 3(c)              | Articles of Merger effective July 10, 2000                                                                                                                                            |                                                                                                                             |
| 3(d)              | Bylaws, as amended                                                                                                                                                                    |                                                                                                                             |
| 4(a)              | Specimen Common Stock Certificate                                                                                                                                                     |                                                                                                                             |
| 4(b)              | Specimen Rights Certificate                                                                                                                                                           | Incorporated by reference to Exhibit B to Exhibit 4.1 to the Registrant's Current Report on Form 8-K dated February 3, 2000 |
| 4(c)              | Rights Agreement dated as of September 24, 1990 (as amended and restated as of February 3, 2000) between the Registrant and ChaseMellon Shareholder Services, L.L.C., as Rights Agent | Incorporated by reference to Current Report on Form 8-K dated February 3, 2000, at Exhibit 4.1                              |
| 4(d)              | Credit Agreement dated as of April 11, 2000, among the Registrant, Bank of America, N.A., as agent, and the lenders listed therein                                                    |                                                                                                                             |
| 27                | Financial Data Schedule                                                                                                                                                               |                                                                                                                             |

b) Reports on Form 8-K. There were no reports on Form 8-K filed during the quarter ended June 30, 2000.

## 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.

ESCO TECHNOLOGIES INC.

/s/ Gary E. Muenster

-----  
 Gary E. Muenster  
 Vice President and  
 Corporate Controller  
 (As duly authorized officer  
 and principal accounting  
 officer of the registrant)

Dated: August 14, 2000

ARTICLES OF MERGER  
MERGING  
ESCO TECHNOLOGIES INC.  
WITH AND INTO  
ESCO ELECTRONICS CORPORATION

(Section 351.447, RSMo.)

Pursuant to the provisions of The General and Business Corporation Law of Missouri, the undersigned corporations certify the following:

1. That ESCO Technologies Inc. of Missouri and ESCO Electronics Corporation of Missouri are hereby merged and that the above named ESCO Electronics Corporation is the surviving corporation.

2. That the Board of Directors of ESCO Technologies Inc., on May 11 2000, by unanimous consent resolutions approved the Plan of Merger set forth in these articles.

3. That the Board of Directors of ESCO Electronics Corporation met on May 4, 2000 and by resolution adopted by a majority vote of the members of such board approved the Plan of Merger set forth in these articles.

4. That this Plan of Merger has been adopted pursuant to Section 351.447, RSMo.

5. That the resolution of the Board of Directors of the parent corporation, ESCO Electronics Corporation (the "Company"), approving the Plan of Merger is as follows:

RESOLVED, that it is deemed necessary and advisable that ESCO Technologies Inc. be merged with and into the Company (the "Merger") and that the Company be the surviving corporation in such Merger;

6. That the parent corporation, ESCO Electronics Corporation, is in compliance with the 90 percent ownership requirement of Section 351.447 RSMo., and will maintain at least 90 percent ownership of each of the other corporations, party to the merger, until the issuance of the Certificate of Merger by the Secretary of State of Missouri.

7. PLAN OF MERGER

1. ESCO Electronics Corporation of Missouri is the survivor.

2. All of the property, rights, privileges, leases and patents of ESCO Technologies Inc. are to be transferred to and become the property of the survivor. The officers and board of directors of the above named corporations are authorized to execute all deeds, assignments, and documents of every nature which may be needed to effectuate a full and complete transfer of ownership.

3. The officers and board of directors of ESCO Electronics Corporation shall continue in office until their successors are fully elected and qualified under the provisions of the by-laws of the surviving corporation.



4. The Restated Articles of Incorporation of the survivor are amended as follows:

ARTICLE ONE

The name of the corporation (hereinafter referred to as the "Corporation") is: ESCO Technologies Inc.

8. That these Articles of Merger shall become effective the 10th day of July, 2000.

IN WITNESS WHEREOF, these Articles of Merger have been executed in duplicate by the aforementioned corporations as of the day and year hereafter acknowledged.

ESCO TECHNOLOGIES INC.

(CORPORATE SEAL)

By -----  
Vice President

ATTEST:

By -----  
Secretary

ESCO ELECTRONICS CORPORATION

(CORPORATE SEAL)

By -----  
Vice President

ATTEST:

By -----  
Assistant Secretary

BYLAWS OF ESCO TECHNOLOGIES INC.  
AMENDED AND RESTATED AS OF  
JULY 10, 2000

BYLAWS OF  
ESCO TECHNOLOGIES INC.

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BYLAWS  
OF  
ESCO TECHNOLOGIES INC.

ARTICLE ONE

OFFICES

Section 1.1 Registered Office. The registered office of the Corporation in Missouri shall be located at 8888 Ladue Road, Suite 200, St. Louis, Missouri, 63124, or at such other address within the State of Missouri as the Board of Directors may from time to time authorize by duly adopted resolution.

Section 1.2 Other Offices. The Corporation may maintain such other offices both within and without the State of Missouri as the business of the Corporation may from time to time require or as the Board of Directors may determine.

ARTICLE TWO

SHAREHOLDERS' MEETINGS

Section 2.1 Annual Meetings. The annual meeting of shareholders for the election of Directors and for the transaction of such other business as properly may come before such meeting shall be held at such place within or without the State of Missouri as the Board of Directors may direct. In the notice of such meeting, on the first Monday in February of each year if not a legal holiday or, if a legal holiday, on the next succeeding business day not a legal holiday, commencing with February 4, 1991; provided, however, the day fixed for such meeting in any year may be changed, by resolution of the Board of Directors, to such other day which is not a legal holiday, as the Board of Directors may deem to be desirable or appropriate, subject to any applicable limitations of law. Every meeting of the shareholders shall be convened at the hour stated in the notice for the meeting and continue until declared adjourned by a vote of the shareholders present or declared adjourned by the presiding officer.

Section 2.2 Special Meetings. Special meetings of the shareholders or of the holders of any special class of stock of the Corporation, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called only by the affirmative vote of a majority of the entire Board of Directors or by the Chairman of the Board of Directors, any Vice Chairman of the Board of Directors or the President by request of such a meeting in writing. Such request shall be delivered to the Secretary of the Corporation and shall state the purpose or purposes of the proposed meeting. Upon such direction or request, subject to any requirements or limitations imposed by the Corporation's Articles of Incorporation, by these Bylaws or by law, it shall be the duty of the Secretary to call a special meeting of the shareholders to be held at such time as is specified in the request.

Section 2.3 Notice of Meetings. Written or printed notice of each meeting of shareholders, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or given not less than 10 nor more than 70 days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary to each shareholder of record entitled to vote at such meeting. Attendance of a shareholder at any meeting shall constitute a waiver of notice of such meeting except where such shareholder attends the meeting for the sole and express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any notice of a shareholders' meeting sent by mail shall be deemed to be delivered when deposited in the United States mail with first class postage thereon prepaid, addressed to the shareholder at such shareholder's address as it appears on the records of the Corporation.

Section 2.4 Quorum; Adjournment. A majority of the outstanding shares entitled to vote at any meeting, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than a majority of the outstanding shares entitled to vote, but less than such quorum shall have the right successively to adjourn the meeting to a specified date not longer than 90 days after such adjournment, and no notice need be given of such adjournment to shareholders not present at the meeting.

Section 2.5 Voting. Subject to the rights of any holders of preferred stock, each outstanding share entitled to vote under the provisions of the Articles of Incorporation shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting shall be the act of the shareholders unless the vote of a greater number of shares is required by the Corporation's Articles of Incorporation, by these Bylaws or by law. No person shall be admitted to vote on any shares belonging or hypothecated to the Corporation. A shareholder may vote either in person or by proxy, executed in writing by the shareholder or by his duly authorized attorney-in-fact.

Section 2.6 Action by Consent. Unless otherwise prescribed by the Articles of Incorporation, any action required or permitted to be taken by the shareholders of the Corporation may, if otherwise allowed by law, be taken without a meeting of shareholders only if consents in writing, setting forth the action so taken, are signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

### ARTICLE THREE

#### BOARD OF DIRECTORS

##### Section 3.1 Number, Election and Term.

(a) The Board of Directors shall consist of a minimum of three persons and a maximum of ten persons; provided, however, that except as otherwise provided in the Articles of Incorporation the number of Directors may be determined from time to time only by the affirmative vote of a majority of the Board of Directors; and provided, further, that any change in the number of Directors shall be reported to the Secretary of State of the State of Missouri within 30 calendar days of such change.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as possible. In the event of any increase in the number of Directors, any additional Directors shall be added to such classes as may be necessary so that all classes shall be as nearly equal in number as possible. In the event of any decrease in the number of Directors, all classes of Directors shall be decreased as nearly equally as may be possible. No reduction in the number of Directors



shall affect the term of office of any incumbent Director. Subject to the foregoing, the Board of Directors shall determine the class or classes to which any additional Directors shall be added and the class or classes which shall be decreased in the event of any decrease in the number of Directors.

(c) With respect to the initial Board of Directors of the Corporation, the first class of Directors shall hold office until the first annual meeting of shareholders, the second class of Directors shall hold office until the second annual meeting of shareholders and the third class of Directors shall hold office until the third annual meeting of shareholders. Thereafter, Directors shall be elected to hold office for a term of three years, and at each annual meeting of shareholders, the successors to the class of Directors whose terms shall then expire shall be elected for a term expiring at the third succeeding annual meeting after that election.

Section 3.2 Powers. The property and business of the Corporation shall be managed and controlled by or under the direction of the Board of Directors, which shall exercise or direct the exercise of all of the powers of the Corporation and do or cause to be done all acts and things as are not, by the Corporation's Articles of Incorporation, by these Bylaws or by law, directed or required to be done or exercised by the shareholders.

Section 3.3 Meetings; Quorum. Regular meetings of the Board of Directors shall be held at such places, within or without the State of Missouri, and on such days and at such times as shall be fixed from time to time by the Board of Directors. Rules of procedure for the conduct of such meetings may be adopted by resolution of the Board of Directors. Notice of such regular meetings need not be given. A majority of members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but a lesser number may adjourn a meeting to another time or day if a quorum is not present. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by the Corporation's Articles of Incorporation, by these Bylaws or by law. Special meetings of the Board of Directors may be held at any time and place, within or without the State of Missouri, upon the call of the Chairman of the Board of Directors, the President or Secretary of the Corporation by oral,

written, telefax or telegraphic notice duly given, sent or mailed to each Director, at such Director's last known address, not less than twenty-four hours before such meeting; provided, however, that any director may, at any time, in writing or by telegram, waive notice of any meeting at which he may not be or may not have been present. Attendance of a Director at any meeting shall constitute a waiver of notice of the meeting except where a Director attends a meeting for the sole and express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Members of the Board of Directors or of any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 3.4 Action by Consent. Any action which is required to be or may be taken at a meeting of the Directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all the Directors. Any action which is required to be or may be taken at a meeting of a committee of Directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all the members of the committee.

Section 3.5 Resignation of Directors. Any Director of the Corporation may resign at any time by giving written notice of such resignation to the Board of Directors, the Chairman of the Board of Directors, the President, or the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein or, if no time be specified, upon receipt thereof by the Board of Directors or one of the above-named Officers; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6 Compensation of Directors. Directors, as such, may receive such compensation and be reimbursed for expenses of attendance at any meeting of the Board of Directors as shall be determined by resolution of the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.7 Committees; General Rules. The Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate two or more Directors to constitute a committee. Each committee, to the extent provided in such resolution, shall have and may exercise the authority of the Board of Directors, as so delegated in the resolution, in the management of the Corporation. Each committee of the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors when required. Vacancies in the membership of each committee shall be filled by the Board of Directors at any regular or special meeting of the Board of Directors. At all meetings of a committee, a majority of the committee members then in office shall constitute a quorum for the purpose of transacting business, and the acts of a majority of the committee members present at any meeting at which there is a quorum shall be the acts of the committee. A Director who may be disqualified, by reason of personal interest, from voting on any particular matter before a meeting of a committee may nevertheless be counted for the purpose of constituting a quorum of the committee.

Section 3.8 Qualifications. No person shall be eligible for election as a Director under Section 3.1 of this Article Three if such person's 72nd birthday shall fall on a date prior to the commencement of the term for which such person is to be elected or appointed. No person shall be qualified to be elected and to hold office as a Director if such person is determined by a majority of the Board of Directors to have acted in a manner contrary to the best interests of the Corporation, including, but not limited to, the violation of either Federal or State law, or breach of any agreement between that Director and the Corporation relating to his services as a Director, employee or agent of the Corporation. A Director need not be a shareholder.

Section 3.9 Directors Emeritus and Advisory Directors. The Board of Directors may from time to time create one or more positions of Director Emeritus and Advisory Director, and may fill such position or positions for such terms as the Board of Directors deems proper. Each Director Emeritus and Advisory Director shall, upon the invitation of the Board of Directors, have the privilege of attending meetings of the Board of Directors but shall do so solely as an observer. Notice of meetings of the Board of Directors to a Director Emeritus or Advisory Director shall not be required under any applicable law, the Articles of Incorporation or these Bylaws. Each Director Emeritus and Advisory Director shall be entitled to receive such compensation

Director shall be entitled to receive such compensation as may be fixed from time to time by the Board of Directors. No Director Emeritus or Advisory Director shall be entitled to vote on any business coming before the Board of Directors, nor shall they be counted as members of the Board of Directors for the purpose of determining the number of Directors necessary to constitute a quorum, for the purpose of determining whether a quorum is present, or for any other purpose whatsoever. In the case of a Director Emeritus or Advisory Director, the occurrence of any event which in the case of a Director would create a vacancy on the Board of Directors, shall be deemed to create a vacancy in such position; but the Board of Directors may declare the position terminated until such time as the Board of Directors shall again deem it proper to create and to fill the position.

#### ARTICLE FOUR

##### OFFICERS

Section 4.1 Number, Election and Term. The officers of the Corporation shall be a Chairman of the Board, a President and a Secretary who shall be chosen by the Board of Directors at its first meeting after each annual meeting of shareholders. The Board of Directors may also choose one or more Vice-Chairmen of the Board of Directors, one or more Vice Presidents, a Treasurer, one or more Assistant Secretaries and Assistant Treasurers and such other officers as the Board of Directors may deem appropriate. Any two or more offices may be held by the same person. Officers of the Corporation may be given distinctive designations such as Executive Vice President, Group Vice President, Senior Vice President, Chief Operating Officer and Chief Administrative Officer. All officers, unless sooner removed, shall hold their respective offices until the first meeting of the Board of Directors after the next succeeding election of the Board of Directors and until their successors shall have been duly elected and qualified.

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause whenever, in its judgment, the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

Section 4.2 Chairman of the Board. The Chairman shall be the Chief Executive Officer of the Corporation. In addition to his duties as Chairman and Chief Executive Officer, he shall be responsible for the general and active management of the business and affairs of the Corporation, subject only to the control of the Board of Directors, shall have full authority in respect to the signing and execution of deeds, bonds, mortgages, CONTRACTS and other instruments of the Corporation. Unless otherwise determined by the Board of Directors, he shall also be, ex officio, a member of all standing Committees of the Board of Directors, shall preside at all meetings of the shareholders and Directors at which he is present and shall perform any other duties prescribed by the Board of Directors or these Bylaws.

Section 4.3 President. The President shall, in the absence or disability of the Chairman and Vice Chairman, perform the duties and exercise the powers of the Chairman, including presiding at all meetings of the shareholders and directors at which he is present. He shall perform any duties prescribed by the Chairman of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall have equal authority with the Chairman and any Vice-Chairman to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

Section 4.4 Vice Chairmen of the Board. Vice Chairmen, if any, may but need not be executive officers of the Corporation. The Vice Chairman, or, if there shall be more than one, the Vice Chairmen in order of seniority, shall, in the absence or disability of the Chairman, perform the duties and exercise the powers of the Chairman, and shall perform such other duties, and have such other powers as the Chairman or the Board of Directors may, from time to time, prescribe. Each Vice Chairman shall have equal authority with the Chairman and the President with respect to the signing and execution of deeds, bonds, mortgages, contracts and other instruments of the Corporation.

Section 4.5 Vice Presidents. The Vice Presidents, if any, in the order of their seniority shall, In the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform any other duties prescribed by the Chairman, the President or the Board of Directors.

Section 4.6 Secretary and Assistant Secretaries. The Secretary shall keep or cause to be kept a record of all meetings of the shareholders and the Board of Directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the Board of Directors, and shall perform any other duties prescribed by the Board of Directors or the President, under whose supervision he shall be. He shall keep In safe custody the seal of the Corporation and shall affix the same to any instrument requiring it.

The Assistant Secretaries, if any, in order of their seniority shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform any other duties prescribed by the Chairman, the President or the Board of Directors.

Section 4.7 Treasurer and Assistant Treasurers. The Treasurer, if any, shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and shall perform any other duties prescribed by the Chairman, the President or the Board of Directors.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the

The Assistant Treasurers, if any, in the order of their seniority shall, In the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform any other duties prescribed by the Board of Directors.

faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

The Assistant Treasurers, if any, in the order of their seniority shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform any other duties prescribed by the Board of Directors.

Section 4.8 Controller and Assistant Controllers. The Controller, if one is elected by the Board of Directors, shall have charge of the accounting records of the Corporation, shall maintain appropriate internal control and auditing of the Corporation, and shall perform such other duties as directed by the Board of Directors, the Chairman or other senior officers. The Assistant Controllers, if any, in order of their seniority shall, in the absence or disability of the Controller, perform the duties and exercise the powers of the Controller and shall have any other duties prescribed by the Board of Directors.

Section 4.9 Appointed Officers. In addition to the corporate officers elected by the Board of Directors, the Chairman may, from time to time, appoint one or more other persons as appointed officers who shall not be deemed to be corporate officers, but may, respectively, be designated with such titles as the Chairman may deem appropriate. The Chairman may prescribe the powers to be exercised and the duties to be performed by each such appointed officer, may designate the term for which each such appointment is made, and may, from time to time, terminate any or all of such appointments with or without cause. Such appointments and termination of appointments shall be reported periodically to the Board of Directors.

#### ARTICLE FIVE

#### CAPITAL STOCK

Section 5.1 Stock Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate, in any form approved by the Board of Directors, certifying the number and class of shares owned by the shareholder in the Corporation, signed by the Chairman, the President or a Vice

President and by the Secretary or Treasurer or an Assistant Secretary or Assistant Treasurer of the Corporation and sealed with the seal of the Corporation. If the certificate is countersigned by a transfer agent other than the Corporation or its employee, or by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile signature, or may be engraved or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on the certificate shall have ceased to be an officer, transfer agent or registrar before the certificate is Issued, the certificate may nevertheless be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of Issue.

Section 5.2 Transfer of Stock. The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives. Upon transfer, the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other persons as the Board of Directors may designate, by whom they shall be cancelled and new certificates shall thereupon be issued. Except as otherwise expressly provided by the statutes of the State of Missouri, the Corporation shall be entitled to treat the holder of record of any share or shares of stock as the absolute owner thereof for all purposes and, accordingly, shall not be bound to recognize any legal, equitable or other claim to or interest in such share or shares on the part of any other person whether or not it or they shall have express or other notice thereof.

Section 5.3 Closing of Transfer Books and Fixing of Record Date. The Board of Directors shall have the power to close the transfer books of the Corporation for a period not exceeding 70 days prior to the date of any meeting of shareholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect. In lieu of so closing the transfer books, the Board of Directors may fix in advance a record date for the determination of the shareholders entitled to notice of and to vote at any meeting and any adjournment thereof, or entitled to receive payment of any dividend or any allotment of rights, or entitled to exercise the rights in respect of any change, conversion or exchange of shares, up to 70 days prior to the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the



allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect. In such case only the shareholders who are shareholders of record on the record date so fixed shall be entitled to receive notice of and to vote at such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the date of closing of the transfer books or the record date fixed as aforesaid. If the Board of Directors does not close the transfer books or set a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders, only the shareholders who are shareholders of record at the close of business on the 20th day preceding the date of the meeting shall be entitled to notice of and to vote at the meeting and upon any adjournment of the meeting, except that if prior to the meeting written waivers of notice of the meeting are signed and delivered to the Corporation by all of the shareholders of record at the time the meeting is convened, only the shareholders who are shareholders of record at the time the meeting is convened shall be entitled to vote at the meeting and any adjournment of the meeting.

Section 5.4 Lost or Destroyed Certificates. The holder of any shares of stock of the Corporation shall immediately notify the Corporation and its transfer agents and registrars, if any, of any loss or destruction of the certificates representing the same. The Corporation may issue a new certificate in place of any certificate theretofore Issued by it which is alleged to have been lost or destroyed and the Board of Directors may require the owner of the lost or destroyed certificate or the owner's legal representative to give the Corporation a bond in a sum and in a form approved by the Board of Directors, and with a surety or sureties which the Board of Directors finds satisfactory, to indemnify the Corporation and its transfer agents and registrars, if any, against any claim or liability that may be asserted against or incurred by it or any transfer agent or registrar on account of the alleged loss or destruction of any certificate or the issuance of a new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the Board of Directors, it is proper so to do. The Board of Directors may delegate to any Officer or Officers of the Corporation any of the powers and authorities contained in this section.

Section 5.5 Transfer Agents and Registrars. The Board of Directors may appoint one or more transfer agents or transfer clerks and one or more registrars which may be banks, trust companies or other financial Institutions located within or without the State of Missouri; may define the authority of such transfer agents and registrars of transfers; may require all stock certificates to bear the signature of a transfer agent or a registrar of transfers, or both; and may change or remove any such transfer agent or registrar of transfers.

#### ARTICLE SIX

##### CORPORATE SEAL

The corporate seal shall be circular in form and shall bear the name of the Corporation, the year of Its Incorporation and the words "Corporate Seal" and "Missouri" and otherwise shall be such form as shall be approved from time to time by the Board of Directors.

#### ARTICLE SEVEN

##### FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of October of each year.

COMMON STOCK

\$01 PAR VALUE

(INCORPORATED UNDER THE LAWS  
OF THE STATE OF MISSOURI)

THIS CERTIFICATE IS TRANSFERABLE IN  
NEW YORK, NY AND RIDGEFIELD PARK, NJ

CUSIP 296315 10 4  
SEE REVERSE FOR CERTAIN  
DEFINITIONS

ESCO TECHNOLOGIES, INC.

THIS CERTIFIED THAT

IS THE OWNER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF

ESCO TECHNOLOGIES INC., INCLUDING RELATED RIGHTS (THE "RIGHTS") TO PURCHASE  
PREFERRED STOCK ISSUED PURSUANT TO THE RIGHTS AGREEMENT (DEFINED ON THE  
REVERSE), TRANSFERABLE IN PERSON OR BY DULY AUTHORIZED ATTORNEY UPON SURRENDER  
OF THIS CERTIFICATE PROPERTY ENDORSED. THIS CERTIFICATE AND THE SHARES  
REPRESENTED HEREBY ARE ISSUED AND SHALL BE HELD SUBJECT TO ALL OF THE PROVISIONS  
OF THE ARTICLES OF INCORPORATION AND BY-LAWS OF THE COMPANY, AS AMENDED TO ALL  
OF WHICH THE HOLDER BY ACCEPTANCE HEREOF, ASSENTS. THIS CERTIFICATE IS NO VALID  
UNTIL COUNTERSIGNED AND REGISTERED BY THE TRANSFER AGENT AND REGISTRAR.

IN WITNESS WHEREOF, THE COMPANY HAS CAUSED THIS CERTIFICATE TO BE SIGNED IN  
FACSIMILE BY ITS DULY AUTHORIZED OFFICERS AND A FACSIMILE SEAL OF THE COMPANY TO  
BE HEREUNTO AFFIXED.

DATED:

AUTHORIZED SIGNATURE:

/s/ ALYSON S. BARCLAY  
SECRETARY

/s/ D.J. MOORE  
CHAIRMAN, PRESIDENT AND  
CHIEF EXECUTIVE OFFICER

COUNTERSIGNED AND REGISTERED:  
CHASEMELLON SHAREHOLDER SERVICES, L.L.C.  
TRANSFER AGENT AND REGISTRAR

REVERSE SIDE:

ESCO TECHNOLOGIES, INC.

THE RIGHTS AGREEMENT

THIS CERTIFICATE ALSO EVIDENCES CERTAIN RIGHTS ARISING WITH RESPECT TO THE COMMON STOCK AS SET FORTH IN AN AMENDED AND RESTATED RIGHTS AGREEMENT, AS IT MAY FROM TIME TO TIME BE SUPPLEMENTED OR AMENDED (THE "RIGHTS AGREEMENT"), BETWEEN ESCO TECHNOLOGIES INC. ("THE COMPANY") AND THE RIGHTS AGENT (AS DEFINED IN THE RIGHTS AGREEMENT), THE TERMS OF WHICH ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND A COPY OF WHICH IS ON THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY. THE COMPANY WILL MAIL TO THE HOLDER OF THIS CERTIFICATE A COPY OF THE RIGHTS AGREEMENT WITHOUT CHARGE PROMPTLY AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, SUCH RIGHTS MAY BE EVIDENCED BY SEPARATE CERTIFICATES AND NO LONGER BE EVIDENCED BY THIS CERTIFICATE. AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS ISSUED TO, OR HELD BY, ANY PERSON WHO IS, WAS OR BECOMES AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE THEREOF (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT), WHETHER CURRENTLY HELD BY OR ON BEHALF OF SUCH PERSON OR BY ANY SUBSEQUENT HOLDER, MAY BECOME NULL AND VOID.

THE FOLLOWING ABBREVIATIONS, WHEN USED IN THE INSCRIPTION ON THE FACE OF THE CERTIFICATE, SHALL BE CONSTRUED AS THOUGH THEY WERE WRITTEN OUT IN FULL ACCORDING TO APPLICABLE LAWS OR REGULATIONS:

TEN COM AS TENANTS IN COMMON

TEN ENT AS TENANTS BY THE ENTIRETIES

JT TEN AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

TOD TRANSFER ON DEATH DIRECTION IN THE EVENT OF OWNER'S DEATH, TO PERSON NAMED ON FACE

|                  |        |                  |         |
|------------------|--------|------------------|---------|
| UNIF TRAN MIN CT |        | AS CUSTODIAN FOR |         |
|                  | (CUST) |                  | (MINOR) |

|                   |        |                  |         |
|-------------------|--------|------------------|---------|
| UNIF TRAN MIN ACT |        | AS CUSTODIAN FOR |         |
|                   | (CUST) |                  | (MINOR) |

UNDER UNIFORM GIFTS TO MINORS ACT

(STATE)

UNDER UNIFORM TRANSFERS TO MINORS ACT

(STATE)

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED THOUGH NOT IN THE ABOVE LIST

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY SELLS, ASSIGNS AND TRANSFERS UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE



=====  
Credit Agreement

among

ESCO Electronics Corporation

and

Bank of America, N.A.,  
as Administrative Agent, Swing Line Lender  
and Issuing Lender

and

The Other Financial  
Institutions Party Hereto

Dated as of April 11, 2000

Banc of America Securities LLC,  
as  
Sole Arranger and Sole Book Manager

=====  
(BANK OF AMERICA LOGO)

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## Form of

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## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of April 11, 2000 by and among ESCO Electronics Corporation, a Missouri corporation ("Borrower"), each lender from time to time party hereto (collectively, "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and Issuing Lender.

## RECITAL

Borrower has requested that Lenders and Issuing Lender provide a revolving line of credit, and Lenders, Issuing Lender and Administrative Agent are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## SECTION 1. DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Accounts" means all present and future rights of Borrower or any Subsidiary to payment for goods sold or leased or for services rendered, which are not evidenced by instruments or chattel paper, and whether or not they have been earned by performance.

"Acquired Cash Flow" means, with respect to any period, the Consolidated EBITDA attributable on a pro forma basis to any Acquisitions effected during such period assuming the consummation of such Acquisition as of the first day of such period, taking into account adjustments reasonably satisfactory to Administrative Agent to eliminate the effect of any non-recurring expenses or income with respect to Borrower and its Subsidiaries or any acquired Person or assets on Consolidated EBITDA as determined by the chief financial officer of Borrower, the basis for which are set forth in reasonable detail in the compliance certificate delivered to Administrative Agent pursuant to Section. 6.02(b).

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary) provided that a Borrower Party is the surviving entity.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as Administrative Agent hereafter may designate by written notice to Borrower and Lenders.

"Administrative Agent-Related Persons" means Administrative Agent (including any successor agent), together with its Affiliates (including, in the case of Bank of America in its capacity as Administrative Agent, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Affiliate" means any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to be "controlled by" any other Person if such other Person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or (b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Agreement" means this Credit Agreement, as amended, restated, extended, supplemented or otherwise modified in writing from time to time.

"Applicable Amount" means the following amounts per annum in Basis Points, based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by Administrative Agent pursuant to Section 6.02(b); however, that, until Administrative Agent receives the Compliance Certificate for the period ending June 30, 2000, the Applicable Amounts for Commitment Fees, Offshore Rate Loans/Letters of Credit and Base Rate Loans shall be equal to 22.5, 100 and 0, respectively:

| Pricing Level | Leverage Ratio                  | Commitment Fee | Base Rate + | Offshore Rate +<br>Letters of Credit |
|---------------|---------------------------------|----------------|-------------|--------------------------------------|
| 1             | <1.5:1                          | 20             | 0           | 75                                   |
| 2             | > or equal to 1.5:1 but < 2.0:1 | 22.5           | 0           | 100                                  |
| 3             | > or equal to 2.0:1 but <2.5:1  | 25             | 0           | 125                                  |
| 4             | > or equal to 2.5:1             | 30             | 0           | 150                                  |

Thereafter, the Applicable Amount shall be in effect from the date the most recent Compliance Certificate is received by Administrative Agent to but excluding the date the next Compliance Certificate is received; provided, however, that if Borrower fails to timely deliver the next Compliance Certificate, the Applicable Amount from the date such Compliance Certificate was due to but excluding the date such Compliance Certificate is received by Administrative Agent shall be that indicated by the highest pricing level set forth above, and, thereafter, the pricing level indicated by such Compliance Certificate when received.

"Applicable Currency" means, as to any particular Letter of Credit, Dollars or the Offshore Currency in which it is denominated.

"Applicable Payment Date" means, (a) as to any Offshore Rate Loan, the last day of the relevant Interest Period, any date that such Loan is prepaid or converted in whole or in part and the Maturity Date; provided, however, that if any Interest Period for an Offshore Rate Loan exceeds three months, interest shall also be paid on the Business Day which falls every three months after the beginning of such Interest Period; and (b) as to any other Obligations, the last Business Day of each calendar quarter and the Maturity Date; provided, further, that interest accruing at the Default Rate shall be payable from time to time upon demand of Administrative Agent.

"Applicable Time" means Central time.

"Arranger" means Banc of America Securities LLC, a Delaware limited liability company, in its capacity as sole arranger and sole book manager.

"Assignment and Acceptance" means an Assignment and Acceptance substantially in the form of Exhibit D.

"Attorney Costs" means and includes all reasonable fees and disbursements of any law firm or other external counsel and the allocated cost of internal legal services and all disbursements of internal counsel.

"Audited Financial Statements" means the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal year ended September 30, 1999, and the related consolidated statements of income and cash flows for such fiscal year of Borrower.

"Bank of America" means Bank of America, N.A.

"Base Rate" means a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate." Such rate is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Loan made hereunder and specified to be a Base Rate Loan in accordance with Section 2.

"Basis Point" means one one-hundredth of one per cent.

"Borrower" has the meaning set forth in the introductory paragraph hereto.

"Borrower Party" means Borrower or any Person (except Lenders, Administrative Agent and any of their respective Affiliates) from time to time party to a Loan Document.

"Borrowing" and "Borrow" each mean a borrowing of Loans hereunder.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Administrative Agent's Office is located and, if such day relates to any Offshore Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the offshore Dollar interbank market.

"Capital Stock" means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) 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, the issuing Person.

"CERCLA" has the meaning specified in the definition of "Environmental Laws."

"Change of Control" means, with respect to any Person, an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such Person or its subsidiaries, or any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person shall be deemed to have "beneficial ownership" of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 20% or more of the Voting Stock of such Person; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of such Person cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, or (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

"Closing Date" means the date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

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

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Borrower Party in or upon which

a Lien now or hereafter exists in favor of Lenders, or Administrative Agent on behalf of Lenders, whether under this Agreement, under the Collateral Documents or under any other documents executed by any such Person and delivered to Administrative Agent or Lenders.

"Collateral Agent" means Bank of America in its capacity as collateral agent under any of the Collateral Documents or any successor collateral agent.

"Collateral Documents" means, collectively, (a) the Security Agreement, the Mortgages, the Pledge Agreement, and all other security agreements, mortgages, deeds of trust, patent and trademark assignments, lease assignments, guarantees and other similar agreements between any Borrower Party and Lenders or Collateral Agent for the benefit of Lenders now or hereafter delivered to Lenders or Administrative Agent pursuant to or in connection with the transactions contemplated hereby, and all financing statements (or comparable documents now or hereafter filed in accordance with the Uniform Commercial Code or comparable law) against any Borrower Party as debtor in favor of Lenders or Collateral Agent for the benefit of Lenders as secured party, and (b) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

"Commitment" means, for each Lender, the amount set forth opposite such Lender's name on Schedule 2.01, as such amount may be reduced or adjusted from time to time in accordance with the terms of this Agreement (collectively, the "combined Commitments").

"Committed Loan" means a Base Rate Loan or an Offshore Rate Loan made to Borrower by a Lender in accordance with its Pro Rata Share pursuant to Section 2.01, except as otherwise provided herein.

"Committed Loan Note" means a promissory note made by Borrower in favor of a Lender evidencing Committed Loans made by such Lender, substantially in the form of Exhibit C (collectively, the "Committed Loan Notes").

"Compliance Certificate" means a certificate substantially in the form of Exhibit B, properly completed and signed by a Responsible Officer of Borrower.

"Consolidated EBITDA" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) Consolidated Net Income, (b) Consolidated Interest Charges, (c) the amount of taxes, based on or measured by income, used or included in the determination of such Consolidated Net Income, and (d) the amount of depreciation and amortization expense deducted in determining such Consolidated Net Income. Solely for purposes of computing the Applicable Amount, Consolidated EBITDA shall be calculated on a pro forma basis with respect to any Acquisitions and/or Dispositions effected during such period assuming the consummation of such Acquisition and/or Dispositions as of the first day of such period and taking into account adjustments reasonably satisfactory to Administrative Agent to eliminate the effect of any non-recurring expenses or income with respect to Borrower and its Subsidiaries or any acquired Person or assets on Consolidated EBITDA as determined by the

chief financial officer of Borrower, the basis for which are set forth in reasonable detail in the compliance certificate delivered to Administrative Agent pursuant to Section 6.02(b).

"Consolidated Funded Indebtedness" means, as of any date of determination, for Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations and liabilities, whether current or long-term, for borrowed money (including Obligations hereunder), (b) any direct or contingent obligations arising under or in respect of standby letters of credit, (c) that portion of obligations with respect to capital leases that are capitalized in the consolidated balance sheet of Borrower and its Subsidiaries, and (d) without duplication, all Guaranty Obligations with respect to Indebtedness of the type specified in subsections (a) and (b) above of Persons other than Borrower or any Subsidiary; provided that "Consolidated Funded Indebtedness" shall not include any indebtedness incurred by Borrower or any of its Subsidiaries pursuant to the PTI TROL Documents.

"Consolidated Interest Charges" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, fees, charges and related expenses of Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of Borrower and its Subsidiaries with respect to such period under capital leases that is treated as interest in accordance with GAAP.

"Consolidated Net Income" means, for any period, for Borrower and its Subsidiaries on a consolidated basis, the net income of Borrower and its Subsidiaries from continuing operations after extraordinary items for that period.

"Continuation" and "Continue" mean, with respect to any Offshore Rate Loan, the continuation of such Offshore Rate Loan as an Offshore Rate Loan on the last day of the Interest Period for such Loan.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any undertaking, contract, indenture, mortgage, deed of trust or other instrument, document or agreement to which such Person is a party or by which it or any of its property is bound.

"Conversion" and "Convert" mean, with respect to any Loan, the conversion of such Loan from or into another type of Loan.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States of America or other applicable jurisdictions (including foreign jurisdictions) from time to time in effect affecting the rights of creditors generally.

"Default" means any event that, with the giving of any notice, the passage of time, or both, would be an Event of Default.



"Default Rate" means an interest rate equal to the Base Rate plus the Applicable Amount, if any, applicable to Base Rate Loans plus 2% per annum; provided, however, that with respect to an Offshore Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Amount) otherwise applicable to such Loan plus 2% per annum, in each case to the fullest extent permitted by applicable Laws.

"Disposition" or "Dispose" means the sale, transfer, license or other disposition (including any sale and leaseback transaction) of any shares of Capital Stock of any Subsidiary or any other property by any Person, including any sale, assignment, transfer or other disposal with or without recourse of any notes or accounts receivable or any rights and claims associated therewith.

"Dollar" and "\$" means lawful money of the United States of America.

"Dollar Equivalent" means, at any time, (a) as to any amount denominated in Dollars, the amount thereof at such time, and (b) as to any amount denominated in an Offshore Currency, the equivalent amount in Dollars, as determined by Administrative Agent at such time on the basis of the Spot Rate for the purchase of Dollars with such Offshore Currency on the most recent Computation Date provided for in Section 2.03(1).

"Domestic Subsidiary" means a Subsidiary organized under the laws of the United States or any political subdivision or any agency, department or instrumentality thereof.

"Eligible Assignee" means (a) a financial institution organized under the laws of the United States, or any state thereof, and having a combined capital and surplus of at least \$100,000,000; (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and having a combined capital and surplus of at least \$100,000,000, provided that such bank is acting through a branch or agency located in the United States; (c) a Person that is primarily engaged in the business of commercial banking and that is (i) a Subsidiary of a Lender, (ii) a Subsidiary of a Person of which a Lender is a Subsidiary, or (iii) a Person of which a Lender is a Subsidiary; (d) another Lender; (e) any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) which extends credit or buys loans as one of its businesses, including but not limited to, insurance companies, mutual funds and lease financing companies; or (f) other lenders or institutional investors consented to in writing in advance by Administrative Agent and Borrower. No Borrower Party or any Affiliate of a Borrower Party shall be an Eligible Assignee.

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), investigation, cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief, or other

type of relief, resulting from or based upon the presence, placements, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placements, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, or from any property, whether or not owned by Borrower or any Subsidiary or taken as collateral, or in connection with any operations of Borrower.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative order, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the Emergency Planning and Community Right-to-Know Act.

"ERISA" means the Employee Retirement Income Security Act of 1974 and any regulations issued pursuant thereto, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Sections 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate.

"Event of Default" means any of the events or circumstances specified in Section 8.01.

"Exposed Government Contracts" means contracts, subcontracts and agreements which, if terminated, could result in a liability of Borrower or a Subsidiary of Borrower for a refund of progress payments received, directly or indirectly, from any federal governmental agency, authority, regulatory body or other governmental entity.

"Extension of Credit" means (a) a Borrowing, Conversion or Continuation of Loans and (b) a Letter of Credit Action wherein a new Letter of Credit is issued or which has the effect of increasing the amount of, extending the maturity of, or making a material modification to an outstanding Letter of Credit or the reimbursement of drawings thereunder (collectively, the "Extensions of Credit").

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Bank of America on such day on such transactions as determined by Administrative Agent.

"FX Trading Office" means the Foreign Exchange Trading Center, Chicago, Illinois, of Bank of America, or such other of Bank of America's offices as Administrative Agent may designate from time to time.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession, that are applicable to the circumstances as of the date of determination, consistently applied. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Requisite Lenders shall so request, Administrative Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Requisite Lenders), provided that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide to Administrative Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

"Governmental Authority" means (a) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, central bank or public body, or (c) any court, administrative tribunal or public utility.

"Government Contract" means a contract with any United States Governmental Authority and pursuant to which Borrower or any of its Subsidiaries will be supplying services.

"Government Subcontract" means each contract of Borrower or any of its Subsidiaries with a Person (other than Borrower or any of its Subsidiaries) for the supply of goods or services to such Person pursuant to a Government Contract between such Person and a United States Government Authority.

"Guarantors" means each of the Subsidiaries of Borrower from time to time party to the Subsidiary Guaranty.

"Guaranty Obligation" means, as to any Person, any (a) guaranty by such Person of Indebtedness of, or other obligation payable or performable by, any other Person or (b) assurance, agreement, letter of responsibility, letter of awareness, undertaking or arrangement given by such Person to an obligee of any other Person with respect to the payment or performance of an obligation by, or the financial condition of, such other Person, whether direct, indirect or contingent, including any purchase or repurchase agreement covering such obligation or any collateral security therefor, any agreement to provide funds (by means of loans, capital contributions or otherwise) to such other Person, any agreement to support the solvency or level of any balance sheet item of such other Person or any "keep-well" or other arrangement of whatever nature given for the purpose of assuring or holding harmless such obligee against loss with respect to any obligation of such other Person; provided, however, that the term Guaranty Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, covered by such Guaranty Obligation or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the Person in good faith.

"Hazardous Materials" means all those substances that are regulated by, or which may form the basis of liability or a standard of conduct under, any Environmental Law, including any substance identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum-derived substance or waste.

"Indebtedness" means, as to any Person at a particular time, all of the following:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(b) any direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), banker's acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations under any Swap Contract in an amount equal to (i) if such Swap Contract has been closed out, the termination value thereof, or (ii) if such Swap Contract has not been closed out, the mark-to-market value thereof determined on the basis of readily available quotations provided by any recognized dealer in such Swap Contract;

(d) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services, and indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(e) lease payment obligations under capital leases or Synthetic Lease Obligations; and

(f) all Guaranty Obligations of such Person in respect of any of the foregoing;

For all purposes of this Agreement, the Indebtedness of any Person shall include the Indebtedness of any partnership, joint venture or limited liability company in which such Person is a general partner, a joint venturer or a member, unless such Indebtedness is expressly made non-recourse to such Person except for customary exceptions acceptable to Requisite Lenders.

"Indemnified Liabilities" has the meaning set forth in Section 10.13.

"Indemnitees" has the meaning set forth in Section 10.13.

"Interest Period" means, for each Offshore Rate Loan, (i) initially, the period commencing on the date such Offshore Rate Loan is disbursed or Continued or Converted into such Offshore Rate Loan and (ii) thereafter, the period commencing on the last day of the preceding Interest Period, and ending, in each case, on the earlier of (x) the scheduled Maturity Date, or (y) one, two, three or six months thereafter; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period which 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 end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) unless Administrative Agent otherwise consents, there may not be more than 10 Interest Periods for Offshore Rate Loans in effect at any time; and

(d) no Interest Period for any Loan shall extend beyond the Maturity Date.

"Investment" means, as to any Person, any acquisition or any investment by such Person, whether by means of the purchase or other acquisition of stock or other securities of any other Person or by means of a loan, creating a debt, capital contribution, guaranty or other debt or equity participation or

interest in any other Person, including any partnership and joint venture interests in such other Person and any payment by such Person in respect of performance guaranties of any other Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

"Judgment Currency" has the meaning specified in Section 10.25.

"Issuing Lender" means Bank of America, or any such other Lender selected by Borrower that has agreed to act as issuer of such Letter of Credit.

"Laws" or "Law" means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lender" means each lender from time to time party hereto and, as the context requires, Swing Line Lender and Issuing Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such on Schedule 10.02, or such other office or offices as a Lender may from time to time notify Administrative Agent.

"Letter of Credit" means any letter of credit issued or outstanding hereunder, including without limitation the existing letters of credit set forth on Schedule 1.01. whether standby letters of credit or commercial documentary letters of credit.

"Letter of Credit Action" means the issuance, supplement, amendment, renewal, extension, modification or other action relating to a Letter of Credit hereunder.

"Letter of Credit Application" means an application for a Letter of Credit Action from time to time in use by Issuing Lender.

"Letter of Credit Cash Collateral Account" means a blocked deposit account at Bank of America in which Borrower hereby grants a security interest to Bank of America for the benefit of the Issuing Lenders as security for Letter of Credit Usage and with respect to which Borrower agrees to execute and deliver from time to time such documentation as Administrative Agent or Bank of America may reasonably request to further assure and confirm such security interest.

"Letter of Credit Sublimit" means an amount equal to the lesser of (a) \$15,000,000 and (b) the combined Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the combined Commitments.

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn face amount of outstanding Letters of Credit plus the aggregate amount of all drawings under the Letters of Credit not reimbursed by Borrower or converted into Committed Loans.

"Leverage Ratio" means, as of any date of determination, for Borrower and its Subsidiaries on a consolidated basis, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters ending on such date.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement (in the nature of compensating balances, cash collateral accounts or security interests), encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Laws of any jurisdiction), including the interest of a purchaser of accounts receivable.

"Loan" means any advance made by any Lender to Borrower as provided in Section 2 (collectively, the "Loans").

"Loan Documents" means this Agreement and each Note, each Letter of Credit Application, each Collateral Document, each Request for Extension of Credit, each Compliance Certificate, each Rate Swap Document, each certificate, each fee letter, and each other instrument, document and agreement from time to time delivered in connection with this Agreement.

"Material Adverse Effect" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of any Loan Document, (b) is or could reasonably be expected to be material and adverse to the condition (financial or otherwise), business, assets, liabilities (actual or contingent), operations or prospects of Borrower and its Subsidiaries taken as a whole, or (c) materially impairs or could reasonably be expected to materially impair the ability of any Borrower Party to perform the Obligations.

"Material Subsidiary" means, at any time, any Subsidiary either (i) having at such time total assets in excess of 2.5% of the total assets of Borrower and its Subsidiaries, based to the extent applicable, upon Borrower's most recent annual or quarterly financial statements delivered to Administrative Agent pursuant to Section 6.01 or (ii) having earnings that account for 7.0% of the Consolidated EBITDA for the most recently completed fiscal year.

"Maturity Date" means (a) April 11, 2005, or (b) such earlier date upon which the combined Commitments may be terminated in accordance with the terms

of this Agreement, or (c) such later date to which the tenor of the combined Commitments may be extended in accordance with the terms of this Agreement.

"Minimum Amount" means, with respect to each of the following actions, the minimum amount and any multiples in excess thereof set forth opposite such action:

| Type of Action                                                                    | Minimum Amount | Multiples in excess thereof |
|-----------------------------------------------------------------------------------|----------------|-----------------------------|
| Borrowing or prepayment of, or Conversion into, Base Rate Loans                   | \$ 500,000     | \$ 500,000                  |
| Borrowing, prepayment or Continuation of, or Conversion into, Offshore Rate Loans | \$ 1,000,000   | \$ 500,000                  |
| Borrowing or prepayment of, Swing Line Loans                                      | \$ 100,000     | None                        |
| Letter of Credit Action                                                           | \$ 1,000       | None                        |
| Reduction in Commitments                                                          | \$ 5,000,000   | \$ 1,000,000                |
| Assignments                                                                       | \$ 5,000,000   | None                        |

"Mortgage" means any deed of trust, mortgage, leasehold mortgage, assignment of rents or other document creating a Lien in favor of Collateral Agent on real property or any interest in real property.

"Mortgaged Property" means all property subject to a Lien pursuant to a Mortgage.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA.

"Negative Pledge" means a Contractual Obligation that restricts Liens on property.

"Net Proceeds" means with respect to any Disposition, the sum of cash or readily marketable cash equivalents received (including by way of a cash generating sale or discounting of a note or receivable, but excluding any other consideration received in the form of assumption by the acquiring Person of debt or other obligations relating to the properties or assets so disposed of or received in any other non-cash form) therefrom, whether at the time of such disposition or subsequent thereto, net of all legal, title and recording tax expenses, commissions and other fees and all costs and expenses incurred and all federal, state, local and other taxes required to be paid or accrued as a liability as a consequence of such transactions and net of all payments made by Borrower or any of its Subsidiaries on any Indebtedness which is secured by such assets pursuant to a Lien upon or with respect to such assets or which must by the terms of such Lien, or in order to obtain a necessary consent to such Disposition, or by applicable law be repaid out of the



proceeds from such Disposition and net of all costs and expenses in readying for sale the disposal of assets or properties.

"Notes" means, collectively, the Committed Loan Notes and the Swing Line Note.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Borrower Party arising under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest that accrues after the commencement of any proceeding under any Debtor Relief Laws by or against any Borrower Party or any Subsidiary or Affiliate of any Borrower Party.

"Offshore Base Rate" has the meaning set forth in the definition of Offshore Rate.

"Offshore Currency" means any available and freely convertible non-Dollar currency selected by Borrower and acceptable to Issuing Lender in its sole discretion.

"Offshore Rate" means for any Interest Period with respect to any Offshore Rate Loan, a rate per annum determined by Administrative Agent pursuant to the following formula:

Offshore Base Rate

Offshore Rate = 1.00 - Eurodollar Reserve Percentage

Where,

"Offshore Base Rate" means, for such Interest Period:

(a) the rate per annum equal to the rate determined by Administrative Agent to be the offered rate that appears on the page of the Telerate screen that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) in the event the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(c) in the event the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by Administrative Agent as the rate of interest (rounded upward to the next 1/100th of 1%) at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Offshore Rate Loan being made, Continued or Converted by Administrative Agent (or its Affiliate) in its capacity as a Lender and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the offshore Dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, rounded upward to the next 1/100th of 1%) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Offshore Rate for each outstanding Offshore Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

The determination of the Eurodollar Reserve Percentage and the Offshore Base Rate by Administrative Agent shall be conclusive in the absence of manifest error.

"Offshore Rate Loan" means a Committed Loan bearing interest based on the Offshore Rate.

"Ordinary Course Dispositions" means:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of cash, cash equivalents, inventory and other property in the ordinary course of business;

(c) Dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property, or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement property or where Borrower or any Subsidiary determine in good faith that the failure to replace such equipment will not be detrimental to the business of Borrower or such Subsidiary;

(d) Dispositions of assets or property by any Subsidiary to Borrower or another wholly-owned Domestic Subsidiary that is party to the Subsidiary Guaranty; and

(e) Dispositions of assets or property having a fair market value not in excess of \$100,000.

provided, however, that no such Disposition shall be for less than the fair market value of the property being disposed of.

"Ordinary Course Indebtedness" means:

(a) intercompany Guaranty Obligations of Borrower or any Subsidiaries guarantying Indebtedness otherwise permitted hereunder of Borrower or any wholly-owned Subsidiary;

(b) Indebtedness arising from the honoring of a check, draft or similar instrument against insufficient funds;

(c) Ordinary Course Swap Obligations;

(d) trade and other accounts payable in the ordinary course of business in accordance with customary trade terms and which are not overdue for a period of more than 60 days; and

(e) deferred taxes.

"Ordinary Course Investments" means Investments consisting of:

(a) cash and cash equivalents;

(b) advances to officers, directors and employees of Borrower and Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;

(c) Investments of any Subsidiary in Borrower or in another Domestic Subsidiary party to the Subsidiary Guaranty;

(d) extensions of credit to customers or suppliers of Borrower and Subsidiaries in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof; and

(e) Guaranty Obligations permitted by Section 7.01.

"Ordinary Course Liens" means:

(a) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(c) pledges or deposits in connection with worker's compensation, unemployment insurance and other social security legislation;

(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(f) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by Borrower or any Subsidiary in excess of those set forth by regulations promulgated by the Federal Reserve Board, and (ii) such deposit account is not intended by Borrower or any Subsidiary to provide collateral to the depository institution;

(g) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(h) attachment, judgment or other similar Liens arising in connection with litigation or other legal proceedings (and not otherwise a Default hereunder) in the ordinary course of business that is currently being contested in good faith by appropriate proceedings, adequate reserves have been set aside and no material property is subject to a material risk of loss or forfeiture.

"Ordinary Course Swap Obligations" means all obligations (contingent or otherwise) of Borrower or any Subsidiary existing or arising under any Swap Contract, provided that each of the following criteria is satisfied: (a) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person and not for purposes of speculation or taking a "market view;" and (b) such Swap Contracts do not contain any provision ("walk-away" provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the articles of formation and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership or joint venture agreement and

any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the secretary of state or other department in the state of its formation, in each case as amended from time to time.

"Outstanding Obligations" means, as of any date, and giving effect to making any Extensions of Credit requested on such date and all payments, repayments and prepayments made on such date, (a) when reference is made to all Lenders, the sum of (i) the aggregate outstanding principal amount of all Loans and (ii) the Dollar Equivalent of all Letter of Credit Usage, and (b) when reference is made to one Lender, the sum of (i) the aggregate outstanding principal amount of all Loans made by such Lender (excluding, in the case of Swing Line Lender, its Swing Line Loans except to the extent provided in clause (iii) below), (ii) such Lender's ratable risk participation in the Dollar Equivalent of all Letter of Credit Usage, and (iii) such Lender's ratable risk participation in all outstanding Swing Line Loans.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto established under ERISA.

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Borrower or any ERISA Affiliate or to which Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding (5) five plan years.

"Person" means any individual, trustee, corporation, general partnership, limited partnership, limited liability company, joint stock company, trust, unincorporated organization, bank, business association, firm, joint venture, Governmental Authority, or otherwise.

"Plan" means any employee benefit plan maintained or contributed to by a Borrower Party or by any trade or business (whether or not incorporated) under common control with a Borrower Party as defined in Section 4001(b) of ERISA and insured by the Pension Benefit Guaranty Corporation under Title IV of ERISA.

"Pledge Agreement" means that certain Pledge Agreement dated as of the date hereof between Borrower, each Guarantor and Collateral Agent.

"Pledged Collateral" has the meaning specified in the Pledge Agreement.

"Pro Rata Share" means, with respect to each Lender, the percentage (rounded, if necessary to the ninth decimal place) of the combined Commitments set forth opposite the name of such Lender on Schedule 2.01, as such share may be adjusted as contemplated herein.

"PTI TROL" means the cumulative transaction governed by the PTI TROL Documents.

"PTI TROL Documents" means that certain series of agreements dated February 9, 1999, as amended to date and hereafter in accordance with the

terms hereof and executed pursuant to the terms of the PTI TROL Participation Agreement, including without limitation: (a) the Agency Agreement; (b) the Trust Agreement; (c) the Certificates; (d) the Credit Agreement; (e) the Notes; (f) the Lease; (g) the Lease Supplements; (h) the Security Agreement, (i) the Mortgage Instruments; (j) the Other Security Documents; (k) the Ground Leases; and (l) the Deeds and the Bills of Sale, as all of the preceding terms are defined in the PTI TROL Participation Agreement.

"PTI TROL Participation Agreement" means that certain Participation Agreement dated as of February 9, 1999 by and among PTI Technologies, Inc., as Construction Agent and Lessee, First Security Bank, National Association, not in its individual capacity, but solely as Owner Trustee, Bank of America (f/k/a Nationsbank, N.A.), as Agent for the Lenders and the Holders, Borrower and the other Guarantors from time to time party thereto, as Guarantors, and the Holders and Lenders from time to time party thereto.

"Rate Swap Documents" means, collectively, all Swap Contracts entered into between any Borrower Party and any Lender or any Affiliate thereof in respect of any portion of the Obligations.

"Register" has the meaning set forth in Section 2.01(c).

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder (other than an event with respect to which the reporting requirements have been waived), a withdrawal from a Plan described in Section 4063 of ERISA, or a cessation of operations described in Section 4062(e) of ERISA.

"Request for Extension of Credit" means, unless otherwise specified herein, (a) with respect to a Borrowing, Conversion or Continuation of Committed Loans, a written request substantially in the form of Exhibit A-1, (b) with respect to a Letter of Credit Action, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a written request substantially in the form of Exhibit A-2, in each case of a written Request for Extension of Credit, duly completed and signed by a Responsible Officer of Borrower and delivered by Requisite Notice.

"Requisite Lenders" means, as of any date of determination: (a) if the Commitments are then in effect, Lenders (excluding any Lenders not funding when required to so hereunder) having in the aggregate more than 50% of the combined Commitments then in effect and (b) if the Commitments have then been terminated and there are Outstanding Obligations, Lenders holding Outstanding Obligations aggregating more than 50% of such Outstanding Obligations.

"Requisite Notice" means, unless otherwise provided herein, (a) irrevocable written notice to the intended recipient or (b) except with respect to Letter of Credit Actions (which must be in writing), irrevocable telephonic notice to the intended recipient, promptly followed by a written notice to such recipient. Such notices shall be (i) delivered to such recipient at the address or telephone number specified on Schedule 10.02 or as otherwise designated by such recipient by written notice to Administrative Agent, and (ii) if made by any Borrower Party, given or made by a Responsible Officer of such Borrower Party. Any written notice delivered in connection

with any Loan Document shall be in the form, if any, prescribed herein or therein. Any notice sent by other than hardcopy shall be promptly confirmed by a telephone call to the recipient and, if requested by Administrative Agent, by a manually-signed hardcopy thereof.

"Requisite Time" means, with respect to any of the actions listed below, the time and date set forth below opposite such action:

| Type of Action                                                                    | Applicable Time | Date of Action                                                                                   |
|-----------------------------------------------------------------------------------|-----------------|--------------------------------------------------------------------------------------------------|
| Delivery of Request for Extension of Credit for, or notice for:                   |                 |                                                                                                  |
| Borrowing or prepayment of Base Rate Loans                                        | 9:00 a.m.       | Same Business Day as such Borrowing or prepayment                                                |
| Conversion into Base Rate Loans                                                   | 9:00 a.m.       | 3 Business Days prior such Conversion                                                            |
| Borrowing, prepayment or Continuation of, or Conversion into, Offshore Rate Loans | 10:00 a.m.      | 3 Business Days prior to such Borrowing, prepayment Continuation or Conversion                   |
| Borrowing or prepayment of, Swing Line Loans                                      | 12:00 p.m.      | Same date as such Borrowing or prepayment                                                        |
| Letter of Credit Action (Dollars as Applicable Currency)                          | 10:00 a.m.      | 2 Business Days prior to such action (or such lesser time which is acceptable to Issuing Lender) |
| Letter of Credit Action (Offshore Currency as Applicable Currency)                | 10:00 a.m.      | 4 Business Days prior to such action (or such lesser time which is acceptable to Issuing Lender) |
| Voluntary reduction in or termination of Commitments                              | 10:00 a.m.      | 5 Business Days prior to such reduction or termination                                           |
| Payments by Lenders or Borrower to Administrative Agent                           | 10:00 a.m.      | On date payment is due                                                                           |

"Responsible Officer" means the president, chief financial officer, treasurer or assistant treasurer of a Borrower Party. Any document or certificate hereunder that is signed by a Responsible Officer of a Borrower Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Borrower Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Borrower Party.

"Restricted Payment" means:

(a) the declaration or payment of any dividend or distribution by Borrower or any Subsidiary, either in cash or property, on any of the shares of the Capital Stock of Borrower or any Subsidiary (except dividends or other distributions payable solely in shares of Capital Stock of Borrower or any Subsidiary or cash dividends payable by any Subsidiary to Borrower or to a wholly-owned Subsidiary);



(b) the purchase, redemption or retirement by Borrower or any Subsidiary of any of its Capital Stock or any warrants, rights or options to purchase or acquire any of its Capital Stock, whether directly or indirectly;

(c) any other payment or distribution by Borrower or any Subsidiary in respect of its Capital Stock, either directly or indirectly;

(d) any Investment other than an Investment otherwise permitted under any Loan Document; and

(e) the prepayment, repayment, redemption, defeasance or other acquisition or retirement for value prior to any scheduled maturity, scheduled repayment or scheduled sinking fund payment, of any Indebtedness not otherwise permitted under any Loan Document to be so paid.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Security Agreement" means that certain Security Agreement dated as of the date hereof between Borrower, each Guarantor and Collateral Agent.

"Spot Rate" for a currency means the rate quoted by Bank of America as the spot rate for the purchase by Bank of America of such currency with another currency through its FX Trading Office at approximately 10:30 a.m. (Applicable Time) on the date two Business Days prior to the date as of which the foreign exchange computation is made.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of Borrower.

"Subsidiary Guaranty" means that certain Subsidiary Guaranty dated as of the date hereof by certain Subsidiaries of Borrower in favor of Administrative Agent.

"Surety Instruments" means all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipperside bonds, performance bonds, surety bonds and similar instruments.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward

bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, as amended, restated, extended, supplemented or otherwise modified in writing from time to time, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender).

"Swing Line" means the revolving line of credit established by Swing Line Lender in favor of Borrower pursuant to Section 2.04.

"Swing Line Lender" means Bank of America, or any successor swing line Lender hereunder.

"Swing Line Loan" means a Base Rate Loan made by Swing Line Lender to Borrower under the Swing Line.

"Swing Line Note" means a promissory note made by Borrower in favor of Swing Line Lender evidencing Swing Line Loans made by such Lender, substantially in the form of Exhibit E.

"Swing Line Sublimit" means an amount equal to the lesser of (a) \$5,000,000 and (b) the combined Commitments. The Swing Line Sublimit is part of, and not in addition to, the combined Commitments.

"Synthetic Lease Obligations" means all monetary obligations of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the Indebtedness of such Person (without regard to accounting treatment).

"Threshold Amount" means \$10,000,000.

"to the best knowledge of" means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by such Person (or, in the case of a Person other than a natural Person, known by any officer of such Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by such Person (or, in the case of a Person other than a natural Person, would have been known by an officer of such Person).

"type" of Loan means (a) a Base Rate Loan, (b) an Offshore Rate Loan and (c) a Swing Line Loan.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is entitled to vote in the election of the Board of Directors (or other governing body) of such Person.

"UCC" means the Uniform Commercial Code as in effect in the State of Missouri.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

#### 1.02 Use of Certain Terms.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto or thereto, unless otherwise defined therein.

(b) As used herein, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and plural include one another.

(c) The words "herein" and "hereunder" and words of similar import when used in any Loan Document shall refer to the Loan Documents as a whole and not to any particular provision thereof. The term "including" is by way of example and not limitation. References herein to a Section, subsection or clause shall, unless the context otherwise requires, refer to the appropriate Section, subsection or clause in this Agreement.

(d) The term "or" is disjunctive; the term "and" is conjunctive. The term "shall" is mandatory; the term "may" is permissive.

1.03 ACCOUNTING TERMS. All accounting terms not specifically or completely defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

1.04 ROUNDING. Any financial ratios required to be maintained by Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed in this Agreement and rounding the result up or down to the nearest number (with a round-up if there is no nearest number) to the number of places by which such ratio is expressed in this Agreement.

1.05 EXHIBITS AND SCHEDULES. All exhibits and schedules to this Agreement, either as originally existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference. A matter disclosed on any Schedule shall be deemed disclosed on all Schedules.

1.06 REFERENCES TO AGREEMENTS AND LAWS. Unless otherwise expressly provided herein, (a) references to agreements (including the Loan Documents) and other contractual instruments shall include all amendments, restatements, extensions, supplements and other modifications thereto (unless prohibited by any Loan Document), and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

## SECTION 2. THE COMMITMENTS AND EXTENSIONS OF CREDIT

### 2.01 COMMITTED LOANS.

(a) Subject to the terms and conditions set forth in this Agreement, each Lender severally agrees to make, Convert and Continue Committed Loans until the Maturity Date in such amounts as Borrower may from time to time request; provided, however, that the Outstanding Obligations of each Lender (including Swing Line Lender's Swing Line Loans) shall not exceed such Lender's Commitment, and the Outstanding Obligations of all Lenders shall not exceed the combined Commitments at any time. This is a revolving credit and, subject to the foregoing and the other terms and conditions hereof, Borrower may borrow, Convert, Continue, prepay and reborrow Committed Loans as set forth herein without premium or penalty.

(b) Loans made by each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender in the ordinary course of business. Upon the request of any Lender made through Administrative Agent, such Lender's Loans may be evidenced by one or more Notes, instead of or in addition to loan accounts. Each such Lender may attach schedules to its Note(s) and endorse thereon the date, amount and maturity of its Committed Loans and payments with respect thereto. Such Notes, loan accounts and records shall be conclusive absent manifest error of the amount of such Loans and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower to pay any amount owing with respect to the Loans.

(c) (i) Administrative Agent shall maintain, at Administrative Agent's Office, a register for the recordation of the names and addresses of

Lenders and the Commitments and Extensions of Credit of each Lender from time to time (the "Register"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(ii) Administrative Agent shall record in the Register the Commitment and Extensions of Credit from time to time of each Lender, and each repayment or prepayment in respect thereof. Any recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, however, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Outstanding Obligations.

(iii) Each Lender shall record on its internal records (including, without limitation, the Notes held by such Lender) the amount of each Extension of Credit made by it and each payment in respect thereof. Any recordation shall be conclusive and binding on Borrower, absent manifest error; provided, however, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitment or Outstanding Obligations; provided, further, that in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall, absent manifest error govern.

(iv) Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Extensions of Credit listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Extensions of Credit shall be effective, in each case, unless and until an Assignment and Acceptance effecting the assignment or transfer thereof shall have been accepted by Administrative Agent and recorded in the Register. Prior to such recordation, all amounts owed with respect to the applicable Commitment or Outstanding Obligations shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Outstanding Obligations.

## 2.02 BORROWINGS, CONVERSIONS AND CONTINUATIONS OF COMMITTED LOANS.

(a) Borrower may irrevocably request a Borrowing, Conversion or Continuation of Committed Loans on any Business Day in a Minimum Amount therefor by delivering a Request for Extension of Credit therefor by Requisite Notice to Administrative Agent not later than the Requisite Time therefor. All Borrowings, Conversions and Continuations of Committed Loans shall constitute Base Rate Loans unless properly and timely otherwise designated as set forth in the prior sentence.

(b) Following receipt of a Request for Extension of Credit, Administrative Agent shall promptly notify each Lender of its Pro Rata Share thereof by Requisite Notice. In the case of a Borrowing of Committed Loans,

each Lender shall make the funds for its Loan available to Administrative Agent at Administrative Agent's Office not later than the Requisite Time therefor on the Business Day specified in such Request for Extension of Credit. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if the initial Extension of Credit hereunder, Section 4.01), all funds so received shall be made available to Borrower in like funds received. Administrative Agent shall promptly notify Borrower and Lenders of the interest rate applicable to any Offshore Rate Loan which is a Committed Loan upon determination of same. Administrative Agent shall from time to time notify Borrower and Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(c) Except as otherwise provided herein, an Offshore Rate Loan may be Continued or Converted only on the last day of the Interest Period for such Offshore Rate Loan. During the existence of a Default or Event of Default, no Committed Loans may be requested as, Converted into or Continued as Offshore Rate Loans without the consent of Requisite Lenders, and Requisite Lenders may demand that any or all of the then outstanding Offshore Rate Loans be Converted immediately into Base Rate Loans.

(d) If a Committed Loan is to be made on the same date that another Committed Loan is due and payable, Borrower or Lenders, as the case may be, shall, unless Administrative Agent otherwise requests, make available to Administrative Agent the net amount of funds giving effect to both such Loans and the effect for purposes of this Agreement shall be the same as if separate transfers of funds had been made with respect to each such Loan.

(e) The failure of any Lender to make any Committed Loan on any date shall not relieve any other Lender of any obligation to make a Committed Loan on such date, but no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan.

## 2.03 LETTERS OF CREDIT.

(a) THE LETTER OF CREDIT COMMITMENT. Subject to the terms and conditions set forth in this Agreement, until the date five (5) Business Days prior to the Maturity Date, Issuing Lender shall take such Letter of Credit Actions as Borrower may from time to time request; provided, however, that the Outstanding Obligations of each Lender (excluding Swing Line Lender's Swing Line Loans) shall not exceed such Lender's Commitment, and the Outstanding Obligations of all Lenders shall not exceed the combined Commitments at any time, and Letter of Credit Usage shall not exceed the Letter of Credit Sublimit at any time. Subject to subsection (f) below and unless consented to by Issuing Lender and Requisite Lenders, no Letter of Credit may expire more than 12 months after the date of its issuance or last renewal; provided, however, that no Letter of Credit shall expire after the date five (5) Business Days prior to the Maturity Date. If any Letter of Credit Usage remains outstanding after such date, Borrower shall, not later than such date, deposit cash in an amount equal to such Letter of Credit Usage in a Letter of Credit Cash Collateral Account.

(b) REQUESTING LETTER OF CREDIT ACTIONS. Borrower may irrevocably request a Letter of Credit Action in a Minimum Amount therefor in United States Dollars or any Offshore Currency by delivering a Letter of Credit Application therefor to Issuing Lender, with a copy to Administrative Agent (who shall notify Lenders), by Requisite Notice not later than the Requisite Time therefor. Each Letter of Credit Action shall be in a form acceptable to Issuing Lender in its sole discretion. Unless Administrative Agent notifies Issuing Lender that such Letter of Credit Action is not permitted hereunder, or Issuing Lender notifies Administrative Agent that it has determined that such Letter of Credit Action is contrary to any Laws or policies of Issuing Lender, Issuing Lender shall, upon satisfaction of the applicable conditions set forth in Section 4.02 with respect to any Letter of Credit Action constituting an Extension of Credit, effect such Letter of Credit Action. This Agreement shall control in the event of any conflict with any Letter of Credit Application. Upon the issuance of a Letter of Credit, each Lender shall be deemed to have purchased from Issuing Lender a risk participation therein in an amount equal to such Lender's Pro Rata Share times the amount of such Letter of Credit.

(c) REIMBURSEMENT OF PAYMENTS UNDER LETTERS OF CREDIT. Borrower shall reimburse Issuing Lender through Administrative Agent for any payment that Issuing Lender makes under a Letter of Credit on or before the date of such payment; provided, however, that if the conditions precedent set forth in Section 4.02 can be satisfied, Borrower may request a Borrowing of Committed Loans to reimburse Issuing Lender for such payment pursuant to Section 2.02, or, failing to make such request, Borrower shall be deemed to have requested a Borrowing of Base Rate Loans on such payment date pursuant to subsection (e) below.

(d) FUNDING BY LENDERS WHEN ISSUING LENDER NOT REIMBURSED. Upon any drawing under a Letter of Credit, Issuing Lender shall notify Administrative Agent and Borrower. If Borrower fails to timely make the payment required pursuant to subsection (c) above, Issuing Lender shall notify Administrative Agent of such fact and the Dollar Equivalent of the amount of such unreimbursed payment. Administrative Agent shall promptly notify each Lender of its Pro Rata Share of such amount by Requisite Notice. Each Lender shall make funds in Dollars in an amount equal to its Pro Rata Share of such amount available to Administrative Agent at Administrative Agent's Office not later than the Requisite Time therefor on the Business Day specified by Administrative Agent, and Administrative Agent shall remit the funds so received to Issuing Lender. The obligation of each Lender to so reimburse Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of a Default or Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of Borrower to reimburse Issuing Lender for the amount of any payment made by Issuing Lender under any Letter of Credit, together with interest as provided herein.

(e) NATURE OF LENDERS' FUNDING. If the conditions precedent set forth in Section 4.02 can be satisfied (except for the giving of a Request for Extension of Credit) on any date Borrower is obligated to, but fails to, reimburse Issuing Lender for a drawing under a Letter of Credit, the funding by Lenders pursuant to the previous subsection shall be deemed to be a

Borrowing of Base Rate Loans (without regard to the Minimum Amount therefor) deemed requested by Borrower. If the conditions precedent set forth in Section 4.02 cannot be satisfied on the date Borrower is obligated to, but fails to, reimburse Issuing Lender for a drawing under a Letter of Credit, the funding by Lenders pursuant to the previous subsection shall be deemed to be a funding by each Lender of its risk participation in such Letter of Credit, and each Lender making such funding shall thereupon acquire a pro rata participation, to the extent of its reimbursement, in the claim of Issuing Lender against Borrower in respect of such payment and shall share, in accordance with that pro rata participation, in any payment made by Borrower with respect to such claim. Any amounts made available by a Lender under its risk participation shall be payable by Borrower upon demand of Administrative Agent, and shall bear interest at a rate per annum equal to the Default Rate.

(f) SPECIAL PROVISIONS RELATING TO EVERGREEN LETTERS OF CREDIT.

Borrower may request Letters of Credit that have automatic extension or renewal provisions ("evergreen" Letters of Credit) so long as Issuing Lender consents in its sole and absolute discretion thereto and has the right to not permit any such extension or renewal at least annually within a notice period to be agreed upon at the time each such Letter of Credit is issued. Once an evergreen Letter of Credit is issued, unless Administrative Agent has notified Issuing Lender that Requisite Lenders have elected not to permit such extension or renewal, the Borrower Parties, Administrative Agent and Lenders shall be deemed to have authorized (but may not require) Issuing Lender to, in its sole and absolute discretion, permit the renewal of such evergreen Letter of Credit at any time to a date not later than the date five (5) Business Days prior to the Maturity Date, and, unless directed by Issuing Lender, Borrower shall not be required to request such extension or renewal. Issuing Lender may, in its sole and absolute discretion elect not to permit an evergreen Letter of Credit to be extended or renewed at any time.

(g) OBLIGATIONS ABSOLUTE. The obligation of Borrower to pay to Issuing Lender the amount of any payment made by Issuing Lender under any Letter of Credit shall be absolute, unconditional, and irrevocable. Without limiting the foregoing, Borrower's obligation shall not be affected by any of the following circumstances:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) any amendment or waiver of or any consent to departure from such Letter of Credit, this Agreement, or any other agreement or instrument relating hereto or thereto;

(iii) the existence of any claim, setoff, defense, or other rights which Borrower may have at any time against Issuing Lender, Administrative Agent or any Lender, any beneficiary of such Letter of Credit (or any persons or entities for whom any such beneficiary may be acting) or any other Person, whether in connection with such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto, or any unrelated transactions;



(iv) any demand, statement, or any other document presented under such 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 whatsoever so long as any such document appeared to comply with the terms of the Letter of Credit;

(v) payment by Issuing Lender in good faith under such Letter of Credit against presentation of a draft or any accompanying document which does not strictly comply with the terms of such Letter of Credit; or any payment made by Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Laws;

(vi) the existence, character, quality, quantity, condition, packing, value or delivery of any property purported to be represented by documents presented in connection with such Letter of Credit or for any difference between any such property and the character, quality, quantity, condition, or value of such property as described in such documents;

(vii) the time, place, manner, order or contents of shipments or deliveries of property as described in documents presented in connection with such Letter of Credit or the existence, nature and extent of any insurance relative thereto;

(viii) the solvency or financial responsibility of any party issuing any documents in connection with such Letter of Credit;

(ix) any failure or delay in notice of shipments or arrival of any property;

(x) any error in the transmission of any message relating to such Letter of Credit not caused by Issuing Lender, or any delay or interruption in any such message;

(xi) any error, neglect or default of any correspondent of Issuing Lender in connection with such Letter of Credit;

(xii) any consequence arising from acts of God, wars, insurrections, civil unrest, disturbances, labor disputes, emergency conditions or other causes beyond the control of Issuing Lender;

(xiii) so long as Issuing Lender in good faith determines that the document appears to comply with the terms of the Letter of Credit, the form, accuracy, genuineness or legal effect of any contract or document referred to in any document submitted to Issuing Lender in connection with such Letter of Credit; and

(xiv) any other circumstances whatsoever where Issuing Lender has acted in good faith.

In addition, Borrower will promptly examine a copy of each Letter of Credit and amendments thereto delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify Issuing Lender in writing. Borrower shall be conclusively deemed to have waived any such claim against Issuing Lender and its correspondents unless such notice is given as aforesaid.

(h) ROLE OF ISSUING LENDER. Each Lender and Borrower Party agree that, in paying any drawing under a Letter of Credit, Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. No Administrative Agent-Related Person nor any of the respective correspondents, participants or assignees of Issuing Lender shall be liable to any Lender for any action taken or omitted in connection herewith at the request or with the approval of Lenders or Requisite Lenders, as applicable; any action taken or omitted in the absence of gross negligence or willful misconduct; or the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. No Administrative Agent-Related Person, nor any of the respective correspondents, participants or assignees of Issuing Lender, shall be liable or responsible for any of the matters described in subsection (g) above. In furtherance and not in limitation of the foregoing, Issuing Lender 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 Issuing Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(i) APPLICABILITY OF ISP98 AND UCP. Unless otherwise expressly agreed by Issuing Lender and Borrower when a Letter of Credit is issued and subject to applicable laws, performance under Letters of Credit by Issuing Lender, its correspondents, and beneficiaries will be governed by (i) with respect to standby Letters of Credit, the rules of the "International Standby Practices 1998" ("ISP98") or such later revision as may be published by the Institute of International Banking Law & Practice, subject to applicable laws, and (ii) with respect to commercial Letters of Credit, the rules of the Uniform Customs and Practice for Documentary Credits, as published in its most recent version by the International Chamber of Commerce (the "ICC") on the date any commercial Letter of Credit is issued, and including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro).

(j) LETTER OF CREDIT FEES. With respect to commercial Letters of Credit, Borrower shall pay to Administrative Agent on each Applicable Payment

Date in arrears, for the account of each Lender in accordance with its Pro Rata Share, a Letter of Credit fee equal to 1/8 of 1% of the face amount thereof. With respect to financial Letters of Credit and performance Letters of Credit, Borrower shall pay to Administrative Agent on each Applicable Payment Date in arrears, for the account of each Lender in accordance with its Pro Rata Share, a Letter of Credit fee equal to the Applicable Amount for Letters of Credit times the actual daily maximum amount available to be drawn under each Letter of Credit since the later of the Closing Date and the previous Applicable Payment Date.

If there is any change in the Applicable Amount during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Amount separately for each period during such quarter that such Applicable Amount was in effect.

(k) FRONTING FEE AND DOCUMENTARY AND PROCESSING CHARGES PAYABLE TO ISSUING LENDER. Borrower shall pay directly to Issuing Lender for its sole account a fronting fee in an amount (i) with respect to each performance Letter of Credit and financial Letter of Credit, equal to 1/8 of 1% per annum on the daily average face amount thereof, payable quarterly in arrears on each Applicable Payment Date, and (ii) with respect to each commercial Letter of Credit, equal to 1/8 of 1% of the face amount thereof, payable upon the issuance thereof. In addition, Borrower shall pay directly to Issuing Lender, upon demand, for its sole account its customary documentary and processing charges in accordance with its standard schedule, as from time to time in effect, for any Letter of Credit Action or other occurrence relating to a Letter of Credit for which such charges are customarily made. Such fees and charges are nonrefundable.

(l) UTILIZATION OF OFFSHORE CURRENCIES. (i) Administrative Agent will determine the Dollar Equivalent amount with respect to (A) any Letter of Credit denominated in an Offshore Currency as of the requested issuance date, and (B) outstanding Letters of Credit denominated in an Offshore Currency as of the last Business Day of each month (each such date under clauses (A) and (B) a "Computation Date"). Administrative Agent will provide Borrower with the amount determined pursuant to clause (ii) promptly following the end of each month.

(ii) In the case of a proposed issuance of a Letter of Credit denominated in an Offshore Currency, the applicable Issuing Lender shall be under no obligation to issue such Letter of Credit if the applicable Issuing Lender cannot issue Letters of Credit denominated in the requested Offshore Currency, in which event the Issuing Lender will give notice to Borrower no later than 10:30 a.m. (Applicable Time) on the second Business Day prior to the date of such issuance that the issuance in the requested Offshore Currency is not then available. If the applicable Issuing Lender shall have so notified Borrower that any such issuance in a requested Offshore Currency is not then available, Borrower may, by notice to the applicable Issuing Lender not later than 5:00 p.m. (Applicable Time) two Business Days prior to the requested date of such issuance, withdraw the request for such proposed issuance. If Borrower does so withdraw such request for such proposed issuance, the issuance requested therein shall not occur. If Borrower does not so withdraw such request for such proposed issuance it shall be deemed to

be a request for a Letter of Credit denominated in Dollars in an equivalent aggregate amount.

(m) CURRENCY EXCHANGE FLUCTUATIONS. If on any Computation Date Administrative Agent shall have determined that the aggregate principal amount of all Committed Loans then outstanding plus the aggregate Dollar Equivalent amount of Letter of Credit Usage exceeds the combined Commitments, due to a change in applicable rates of exchange between Dollars and Offshore Currencies, then Administrative Agent shall give notice to Borrower that a prepayment is required under this Section, and Borrower agrees thereupon to make prepayments of Committed Loans, subject to Section 2.05, such that, after giving effect to such prepayment, the aggregate amount of all Loans plus the aggregate Dollar Equivalent amount of Letter of Credit Usage does not exceed the combined Commitments.

(n) OUTSTANDING LETTERS OF CREDIT. The letters of credit set forth under the caption "Letters of Credit outstanding on the Original Closing Date" on Schedule 1.01 annexed hereto and made a part hereof were issued pursuant to the Existing Credit Agreement and will remain outstanding as of the Closing Date (the "Outstanding Letters of Credit"). Borrower, each Issuing Lender and each of Lenders hereby agree with respect to the Outstanding Letters of Credit that such Outstanding Letters of Credit, for all purposes under this Agreement shall be deemed to be Letters of Credit governed by the terms and conditions of this Agreement. Each Lender agrees to participate in each Outstanding Letter of Credit issued by any Issuing Lender in an amount equal to its participation calculated in accordance with Section 2.03(b).

#### 2.04 SWING LINE LOANS.

(a) Subject to the terms and conditions set forth in this Agreement, Swing Line Lender agrees to make Swing Line Loans until the Maturity Date in such amounts as Borrower may from time to time request; provided, however, that (i) the aggregate principal amount of all Swing Line Loans shall not exceed the Swing Line Sublimit and (ii) the Outstanding Obligations of each Lender (including Swing Line Lender's Swing Line Loans) shall not exceed such Lender's Commitment and the Outstanding Obligations of all Lenders shall not exceed the combined Commitments at any time. This is a revolving credit and, subject to the foregoing and the other terms and conditions hereof, Borrower may borrow, prepay and reborrow Swing Line Loans as set forth herein without premium or penalty; provided, however, that Swing Line Lender may terminate or suspend the Swing Line at any time in its sole discretion upon Requisite Notice to Borrower. Each Swing Line Loan shall be a Base Rate Loan and shall bear interest at the rate of interest (including Applicable Amount, if any) otherwise payable on Base Rate Loans.

(b) Unless notified to the contrary by Swing Line Lender, Borrower may irrevocably request a Swing Line Loan on any Business Day in a Minimum Amount therefor by delivering a Request for Extension of Credit therefor by Requisite Notice to Swing Line Lender and Administrative Agent not later than the Requisite Time therefor. Promptly after receipt of such request, Swing Line Lender shall obtain telephonic verification from Administrative Agent that such Swing Line Loan is permitted hereunder. Upon receiving such

verification, Swing Line Lender shall make such Swing Line Loan available to Borrower. Without the consent of Requisite Lenders and Swing Line Lender, no Swing Line Loan shall be made during the continuation of a Default or Event of Default of which Swing Line Lender has received written notice from Administrative Agent specifically referring to this Section and describing the Default or Event of Default. Upon the making of each Swing Line Loan, each Lender shall be deemed to have purchased from Swing Line Lender a risk participation therein in an amount equal to such Lender's Pro Rata Share times the amount of the Swing Line Loan.

(c) Swing Line Lender shall be responsible for invoicing Borrower for interest on the Swing Line Loans. Unless and until any Swing Line Loan is converted into a Borrowing of Base Rate Loans or a funding by Lenders of their participation therein, the interest payable on Swing Line Loans is solely for the account of Swing Line Lender.

(d) Borrower shall repay each Swing Line Loan not later than the Requisite Time for payments hereunder upon the earlier of (i) demand made by Swing Line Lender (with a copy to Administrative Agent) and (ii) the Maturity Date. Payments shall be made directly to Swing Line Lender. If the conditions precedent set forth in Section 4.02 can be satisfied, Borrower may request a Borrowing of Committed Loans to repay Swing Line Lender pursuant to Section 2.02 or, failing to make such request, Borrower shall be deemed to have requested a Borrowing of Base Rate Loans (without regard to the Minimum Amount therefor) on such payment date in a principal amount equal to such payment. Swing Line Lender shall promptly notify Administrative Agent of each Swing Line Loan and each payment thereof.

(e) If Borrower fails to timely make (by payment, a Borrowing or a deemed Borrowing) any payment of principal or interest on any Swing Line Loan to Swing Line Lender, Swing Line Lender shall notify Administrative Agent of such fact and the unpaid amount. Administrative Agent shall promptly notify each Lender of its Pro Rata Share of such unpaid amount by Requisite Notice, and each Lender shall make its Pro Rata Share of such unpaid amount available to Administrative Agent at Administrative Agent's Office not later than the Requisite Time for payments hereunder on the following Business Day. The obligation of each Lender to make such payment shall be absolute and unconditional and shall not be affected by the occurrence of such or any other Event of Default or any other event. Each Lender's payment shall be deemed to be a funding of such Lender's participation in such Swing Line Loan, and each Lender making such funding shall thereupon acquire a pro rata participation, to the extent of its payment, in the claim of Swing Line Lender against Borrower in respect of such payment and shall share, in accordance with that pro rata participation, in any payment made by Borrower with respect to such claim. Any amounts made available by a Lender under its risk participation shall not relieve or otherwise impair the obligation of Borrower to repay Swing Line Lender for any amount of Swing Line Loans, together with interest as provided herein, and such amounts made available shall be payable by Borrower upon demand of Administrative Agent, and shall bear interest at a rate per annum equal to the Default Rate.

## 2.05 PREPAYMENTS.

(a) Upon Requisite Notice to Administrative Agent not later than the Requisite Time therefor, Borrower may at any time and from time to time voluntarily prepay Committed Loans in part in the Minimum Amount therefor or in full without premium or penalty. Administrative Agent will promptly notify each Lender thereof and of such Lender's Pro Rata Share of such prepayment. Any prepayment of an Offshore Rate Loan shall be accompanied by all accrued interest thereon, together with the costs set forth in Section 3.05.

(b) Upon Requisite Notice to Swing Line Lender (with a copy to Administrative Agent) not later than the Requisite Time therefor, Borrower may at any time and from time to time voluntarily prepay Swing Line Loans in part in the Minimum Amount therefor or in full without premium or penalty.

(c) If for any reason the Outstanding Obligations exceed the combined Commitments or the Letter of Credit Usage exceeds the Letter of Credit Sublimit as in effect or as reduced or because of any limitation set forth in this Agreement or otherwise, Borrower shall immediately prepay Loans and/or deposit cash in a Letter of Credit Cash Collateral Account in an aggregate amount equal to such excess.

(d) Any prepayments pursuant to Section 2.06 shall be applied first to any Base Rate Loans then outstanding and then to Offshore Loans with the shortest Interest Periods remaining.

2.06 REDUCTION OR TERMINATION OF COMMITMENTS. (a) VOLUNTARY COMMITMENT REDUCTIONS. Upon Requisite Notice to Administrative Agent not later than the Requisite Time therefor, Borrower may at any time and from time to time, without premium or penalty, permanently and irrevocably reduce the Commitments in a Minimum Amount therefor to an amount not less than the Outstanding Obligations at such time or terminate the Commitments. Any such reduction or termination shall be accompanied by payment of all accrued and unpaid commitment fees with respect to the portion of the Commitments being reduced or terminated. Administrative Agent shall promptly notify Lenders of any such request for reduction or termination of the Commitments. Each Lender's Commitment shall be reduced by an amount equal to such Lender's Pro Rata Share times the amount of such reduction.

(b) MANDATORY COMMITMENT REDUCTIONS. Upon receipt by Borrower or any of its Subsidiaries of Net Proceeds realized upon a Disposition (other than Ordinary Course Dispositions) made by Borrower or any of its Subsidiaries, the Commitment of each Lender shall automatically be reduced by an amount equal to such Lender's Pro Rata Share of such Net Proceeds, provided that the Commitments will not be so reduced on such date to the extent that no Default or Event of Default then exists and Borrower delivers a certificate to Administrative Agent on or prior to such date stating the amount and stating that such Net Proceeds shall be used to purchase assets used in the same or similar line of business of Borrower or any of its Subsidiaries within 365 days following the date of such Disposition; provided, further, if all or any portion of such Net Proceeds not deemed to reduce the combined Commitments are not so used within such 365 day period, the Commitment of each Lender shall automatically be reduced by an amount equal to such Lender's Pro Rata Share of

such remaining portion on the last day of such 365 day period to the extent that Net Proceeds not deemed to reduce the combined Commitments and not so reinvested exceed \$25,000,000 in the aggregate from the Closing Date through the date of such Disposition.

(c) SCHEDULED COMMITMENT REDUCTIONS. In addition to any reductions pursuant to Section 2.06(b), the combined Commitments will be permanently reduced by the following amounts (as reduced by any reduction in the applicable year pursuant to Section 2.06(a)) annually on April 11, 2002 and each anniversary thereof through and including the Maturity Date:

| Date<br>----   | Amount<br>-----                                                                                                                    |
|----------------|------------------------------------------------------------------------------------------------------------------------------------|
| April 11, 2002 | \$9,750,000 plus 13% of the amount the combined Commitments have been increased pursuant to Section 2.12 on or prior to such date  |
| April 11, 2003 | \$10,500,000 plus 14% of the amount the combined Commitments have been increased pursuant to Section 2.12 on or prior to such date |
| April 11, 2004 | \$9,750,000 plus 13% of the amount the combined Commitments have been increased pursuant to Section 2.12 on or prior to such date  |
| April 11, 2005 | Balance of combined Commitments on such date                                                                                       |

To the extent applicable, Borrower will make the prepayments required by Section 2.05(c) on such dates.

#### 2.07 PRINCIPAL AND INTEREST.

(a) Except as otherwise provided hereunder, if not sooner paid, Borrower agrees to pay the outstanding principal amount of each Committed Loan on the Maturity Date.

(b) Subject to subsection (c) below, and unless otherwise specified herein, Borrower shall pay interest on the unpaid principal amount of each Loan (before and after default, before and after maturity, before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Laws) from the date borrowed until paid in full (whether by acceleration or otherwise) on each Applicable Payment Date at a rate per annum equal to the interest rate determined in accordance with the definition of such type of Loan, plus, to the extent applicable in each case, the Applicable Amount for such type of Loan.

(c) If (i) any Event of Default under Sections 8.01(a) or (b) exists and is continuing or (ii) Administrative Agent has given notice to Borrower that any other Event of Default exists and is continuing and the Default Rate is applicable, all Loans outstanding hereunder shall thereafter bear interest (after as well as before entry of judgment thereon to the extent permitted by law) at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Law until such

Event of Default no longer exists and is continuing. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be payable upon demand.

#### 2.08 FEES.

(a) COMMITMENT FEE. Borrower shall pay to Administrative Agent for the account of each Lender pro rata according to its Pro Rata Share, a commitment fee equal to the Applicable Amount times the actual daily amount by which the combined Commitments exceed the Outstanding Obligations (excluding Swing Line Loans). The commitment fee shall accrue at all times from the Closing Date until the Maturity Date and shall be payable quarterly in arrears on each Applicable Payment Date. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Amount during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Amount separately for each period during such quarter that such Applicable Amount was in effect. The commitment fee shall accrue at all times, including at any time during which one or more conditions in Section 4 are not met.

(b) AGENCY FEES. Borrower shall pay to Administrative Agent an agency fee in such amounts and at such times as set forth in a separate letter agreement between Borrower and Administrative Agent. The agency fee is for the services to be performed by Administrative Agent in acting as Administrative Agent and is fully earned on the date paid. The agency fee paid to Administrative Agent is solely for its own account and is nonrefundable.

(c) ARRANGEMENT FEE. On the Closing Date, Borrower shall pay to Arranger an arrangement fee in the amount set forth in a separate letter agreement between Borrower and Arranger. Such arrangement fee is for the services of Arranger in arranging the credit facilities under this Agreement and is fully earned on the date paid. The arrangement fee paid to Arranger is solely for its own account and is nonrefundable.

(d) LENDERS' UPFRONT FEE. On the Closing Date, Borrower shall pay to Administrative Agent, for the respective accounts of Lenders (other than the Co-Agents) pro rata according to their respective Pro Rata Shares, an upfront fee in an amount set forth in a separate letter between Borrower, Bank of America and Arranger. Such upfront fees are for the credit facilities committed by Lenders under this Agreement and are fully earned on the date paid. The upfront fee paid to Lenders is solely for their own account and is nonrefundable.

2.09 COMPUTATION OF INTEREST AND FEES. Computation of interest on Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be calculated on the basis of a year of 365 or 366 days, as the case may be, and the actual number of days elapsed. Computation of all other types of interest and all fees shall be calculated on the basis of a year of 360 days and the actual number of days elapsed, which results in a higher yield to Lenders than a method based on a year of 365 or 366 days. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or



such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

#### 2.10 MAKING PAYMENTS.

(a) Except as otherwise provided herein, all payments by Borrower or any Lender hereunder shall be made to Administrative Agent at Administrative Agent's Office not later than the Requisite Time for such type of payment. All payments received after such Requisite Time shall be deemed received on the next succeeding Business Day. All payments shall be made in immediately available funds in lawful money of the United States of America. All payments by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff.

(b) Upon satisfaction of any applicable terms and conditions set forth herein, Administrative Agent shall promptly make any amounts received in accordance with the prior subsection available in like funds received as follows: (i) if payable to Borrower, by crediting a deposit account designated from time to time by Borrower to Administrative Agent by Requisite Notice, and (ii) if payable to any Lender, by wire transfer to such Lender at its Lending Office. If such conditions are not so satisfied, Administrative Agent shall return any funds it is holding to Lenders making such funds available, together with interest thereon in respect of each day from and including the date such amount was made available by such Lender to Administrative Agent to the date such amount is repaid to such Lender at the Federal Funds Rate.

(c) Subject to the definition of "Interest Period," if any payment to be made by any Borrower Party shall come due on a day other than a Business Day, payment shall instead be considered due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest and fees.

(d) Unless Borrower or any Lender has notified Administrative Agent prior to the date any payment to be made by it is due, that it does not intend to remit such payment, Administrative Agent may, in its sole and absolute discretion, assume that Borrower or Lender, as the case may be, has timely remitted such payment and may, in its sole and absolute discretion and in reliance thereon, make available such payment to the Person entitled thereto. If such payment was not in fact remitted to Administrative Agent in immediately available funds, then:

(i) if Borrower failed to make such payment, each Lender shall forthwith on demand repay to Administrative Agent the amount of such assumed payment made available to such Lender, together with interest thereon in respect of each day from and including the date such amount was made available by Administrative Agent to such Lender to the date such amount is repaid to Administrative Agent at the Federal Funds Rate; and

(ii) if any Lender failed to make such payment, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount

forthwith upon Administrative Agent's demand therefor, Administrative Agent promptly shall notify Borrower, and Borrower shall pay such corresponding amount to Administrative Agent. Administrative Agent also shall be entitled to recover from such Lender interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by Administrative Agent to Borrower to the date such corresponding amount is recovered by Administrative Agent, (A) from such Lender at a rate per annum equal to the daily Federal Funds Rate. and (B) from Borrower, at a rate per annum equal to the interest rate applicable to such Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

(e) If Administrative Agent or any Lender is required at any time to return to Borrower, or to a trustee, receiver, liquidator, custodian, or any official under any proceeding under Debtor Relief Laws, any portion of a payment made by Borrower, each Lender shall, on demand of Administrative Agent, return its share of the amount to be returned, plus interest thereon from the date of such demand (or the next Business Day if such demand is made after 12:00 p.m. Applicable Time) to the date such payment is made at a rate per annum equal to the daily Federal Funds Rate.

2.11 FUNDING SOURCES. Nothing in this Agreement shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

#### 2.12 INCREASE IN COMMITMENTS.

(a) Borrower may from time to time prior to April 11, 2002, upon Requisite Notice to Administrative Agent (who shall promptly notify Lenders), request an increase in the combined Commitments in a minimum amount of \$10,000,000 up to an aggregate increase of \$25,000,000. Each Lender shall respond to Administrative Agent by Requisite Notice whether or not it agrees to increase its Commitment and, if so, by an amount equal to or less than its Pro Rata Share of such requested increase. If any Lender declines, or is deemed to have declined, to participate in any such increase to the full extent of its Pro Rata Share thereof, Borrower may request, through Administrative Agent, that (i) one or more other Lenders, in their sole and absolute discretion, increase their Commitment(s) by an aggregate amount equal to such shortfall and/or (ii) add a financial institution procured by Borrower which would qualify as an Eligible Assignee as a Lender with a Commitment equal to such shortfall (in which case the provisions of Section 10.22(b) shall apply). Each request delivered to Administrative Agent and Lenders under this Section shall specify the time period within which Lenders are to respond. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment. Administrative Agent shall notify Borrower and each Lender of Lenders' responses to each request made hereunder.

(b) If any Commitments are increased in accordance with this Section, Administrative Agent and Borrower shall determine the effective date of such

increase (the "Effective Date"). Administrative Agent and Borrower shall promptly confirm in writing to Lenders the final allocation of such increase and the Effective Date. As a condition precedent to such increase, Borrower shall deliver to Administrative Agent a certificate dated as of the Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of Borrower (i) certifying and attaching the resolutions adopted by each applicable Borrower Party approving or consenting to such increase and (ii) certifying that, before and after giving effect to such increase, the representations and warranties contained in Section 5 are true and correct on and as of the Effective Date and no Default or Event of Default exists. Borrower shall deliver new or amended Notes reflecting the increased Commitment of any Lender holding or requesting a Note. Administrative Agent shall distribute an amended Schedule 2.01 (which shall be incorporated into this Agreement), to reflect any changes therein. Borrower shall prepay any Offshore Rate Loans outstanding on the Effective Date (and pay any breakfunding costs in connection therewith pursuant to Section 3.05) to the extent necessary to keep outstanding Loans ratable with any revised Pro Rata Shares arising from a nonratable increase in the Commitments under this Section.

(c) This section shall supercede any provisions in Section 10.01 to the contrary.

SECTION 3.  
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 TAXES.

(a) Any and all payments by Borrower to or for the account of Administrative Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of Administrative Agent and each Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which Administrative Agent or such Lender, as the case may be, is organized or maintains a lending office (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and liabilities being hereinafter referred to as "Taxes"). If Borrower shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, (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), Administrative Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within 30 days after the date of such payment, Borrower shall furnish to Administrative Agent (who shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) If Borrower shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, Borrower shall also pay to such Lender or Administrative Agent (for the account of such Lender), at the time interest is paid, such additional amount that the respective Lender specifies as necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) Borrower agrees to indemnify Administrative Agent and each Lender for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by Administrative Agent and such Lender, amounts payable under Section 3.01(c) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto.

3.02 ILLEGALITY. If any Lender determines that any Laws have made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Offshore Rate Loans, or materially restricts the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable offshore Dollar market, or to determine or charge interest rates based upon the Offshore Rate, then, on notice thereof by such Lender to Borrower through Administrative Agent, any obligation of such Lender to make Offshore Rate Loans shall be suspended until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or Convert all Offshore Rate Loans of such Lender, either on the last day of the Interest Period thereof, if such Lender may lawfully continue to maintain such Offshore Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Offshore Rate Loans. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.03 INABILITY TO DETERMINE RATES. If, in connection with any Request for Extension of Credit involving any Offshore Rate Loan, Administrative Agent determines that (a) Dollar deposits are not being offered to banks in the applicable offshore dollar market for the applicable amount and Interest Period of the requested Offshore Rate Loan, (b) adequate and reasonable means do not exist for determining the underlying interest rate for such Offshore Rate Loan, or (c) such underlying interest rate does not adequately and fairly reflect the cost to Lenders of funding such Offshore Rate Loan, Administrative Agent will promptly notify Borrower and all Lenders. Thereafter, the obligation of Lenders to make or maintain such Offshore Rate Loan shall be

suspended until Administrative Agent revokes such notice. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of Offshore Rate Loans or, failing that, be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

#### 3.04 INCREASED COST AND REDUCED RETURN; CAPITAL ADEQUACY.

(a) If any Lender determines that any Laws:

(i) subject such Lender to any tax, duty, or other charge with respect to any Offshore Rate Loans or its obligation to make Offshore Rate Loans, or change the basis on which taxes are imposed on any amounts payable to such Lender under this Agreement in respect of any Offshore Rate Loans;

(ii) shall impose or modify any reserve, special deposit, or similar requirement (other than the reserve requirement utilized in the determination of the Offshore Rate) relating to any extensions of credit or other assets of, or any deposits with or other liabilities or commitments of, such Lender (including its Commitment); or

(iii) shall impose on such Lender or on the offshore Dollar interbank market any other condition affecting this Agreement or any of such extensions of credit or liabilities or commitments;

and the result of any of the foregoing is to increase the cost to such Lender of making, Converting into, Continuing, or maintaining any Offshore Rate Loans or to reduce any sum received or receivable by such Lender under this Agreement with respect to any Offshore Rate Loans, then from time to time upon demand of Lender (with a copy of such demand to Administrative Agent), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that any change in or the interpretation of any Laws have the effect of reducing the rate of return on the capital of such Lender or compliance by such Lender (or its Lending Office) or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy to Administrative Agent), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

3.05 BREAKFUNDING COSTS. Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any Continuation, Conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, Continue or Convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

### 3.06 MATTERS APPLICABLE TO ALL REQUESTS FOR COMPENSATION.

(a) A certificate of Administrative Agent or any Lender claiming compensation under this Section 3 and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of clearly demonstrable error. In determining such amount, Administrative Agent or any Lender may use any reasonable averaging and attribution methods. For purposes of this Section 3, a Lender shall be deemed to have funded each Offshore Rate Loan at the Offshore Base Rate used in determining the Offshore Rate for such Loan by a matching deposit or other borrowing in the offshore Dollar interbank market, whether or not such Offshore Rate Loan was in fact so funded.

(b) Upon any Lender making a claim for compensation under Section 3.01 or 3.04, Borrower may remove and replace such Lender in accordance with Section 10.22.

3.07 SURVIVAL. All of Borrower's obligations under this Section 3 shall survive termination of the Commitments and payment in full of all Obligations.

## SECTION 4. CONDITIONS PRECEDENT TO EXTENSIONS OF CREDIT

4.01 CONDITIONS OF INITIAL EXTENSION OF CREDIT. The obligation of each Lender to make its initial Extension of Credit hereunder is subject to satisfaction of the following conditions precedent:

(a) Unless waived by all Lenders (or by Administrative Agent with respect to immaterial matters or immaterial items specified in subsection (v) or (vi) below with respect to which Borrower has given assurances satisfactory to Administrative Agent that they will be delivered promptly following the Closing Date), Administrative Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Borrower Party, each dated on, or in the case of third-party certificates, recently before the Closing Date and each in form and substance satisfactory to Administrative Agent and its legal counsel:

(i) Credit Agreement and Notes. (A) executed counterparts of this Agreement, sufficient in number for distribution to Administrative Agent, Lenders and Borrower;

(B) Committed Loan Notes executed by Borrower in favor of each Lender requesting same, each in a principal amount equal to such Lender's Commitment;

(C) a Swing Line Note executed by Borrower in favor of Swing Line Lender requesting same in the principal amount of the Swing Line Sublimit;

(ii) Resolutions; Incumbency. Such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Borrower Party as Administrative Agent may require to establish the identities of and verify the authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer thereof;

(iii) Good Standing; Organizational Documents. Such evidence as Administrative Agent may reasonably require to verify that each Borrower Party is duly organized or formed, validly existing, in good standing and qualified to engage in business in each jurisdiction in which it is required to be qualified to engage in business, including certified copies of each Borrower Party's Organization Documents, certificates of good standing and/or qualification to engage in business, tax clearance certificates, and the like;

(iv) Certificate. A certificate signed by a Responsible Officer of Borrower certifying (A) that the conditions specified in Sections 4.01(c) and (d) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements which has a Material Adverse Effect;

(v) Legal Opinions.

(i) an opinion of Bryan Cave, general counsel to Borrower and its Subsidiaries addressed to Administrative Agent and Lenders in form and substance satisfactory to Administrative Agent; and

(ii) an opinion of such local counsel to Borrower as shall be requested by Administrative Agent and addressed to Administrative Agent and Lenders.

(vi) Collateral Documents. The Collateral Documents, executed by the Borrower Parties, in appropriate form for recording, where necessary, together with:

(A) copies of all UCC-1 financing statements to be filed, registered or recorded to perfect the security interests of Administrative Agent for the benefit of Lenders, and other filings, registrations and recordings necessary and advisable to perfect the Liens of Administrative Agent for the benefit of Lenders in accordance with applicable law;

(B) written advice relating to such Lien and judgment searches as Administrative Agent shall have requested, and such

termination statements or other documents as may be necessary to confirm that the Collateral is subject to no other Liens in favor of any Persons (other than Liens permitted under this Agreement);

(C) all certificates and instruments representing the Pledged Collateral and stock and note transfer powers executed in blank with signatures guaranteed as Administrative Agent may specify;

(D) to the extent requested by Administrative Agent, funds sufficient to pay any filing or recording tax or fee in connection with any and all UCC-1 financing statements and the Mortgages;

(E) with respect to the Mortgaged Property, an ALTA Form B (or other form acceptable to Administrative Agent and Lenders) mortgagee policy of title insurance or a binder issued by a title insurance company satisfactory to Administrative Agent insuring (or undertaking to insure, in the case of a binder) that the Mortgages create and constitute a valid first Lien against the Mortgaged Property in favor of Administrative Agent, subject only to exceptions acceptable to Administrative Agent, with such endorsements and affirmative insurance as Administrative Agent may reasonably request;

(F) evidence that Administrative Agent has been named as loss payee under all policies of casualty insurance, and as additional insured under all policies of liability insurance, required by the Mortgage;

(G) flood insurance and earthquake insurance, to the extent applicable, on terms reasonably satisfactory to Administrative Agent;

(H) current ALTA surveys and surveyor's certification as to all Mortgaged Property to the extent, if any, required by Administrative Agent, each in form and substance reasonably satisfactory to Administrative Agent;

(I) proof of payment (or arrangements therefor satisfactory to Administrative Agent) of all title insurance premiums, documentary stamp or intangible taxes, recording fees and mortgage taxes payable in connection with the recording of any Mortgage or the issuance of the title insurance policies (whether due on the Closing Date or in the future) including sums due in connection with any future advances;

(J) such consents, estoppels, subordination agreements, waivers and other documents and instruments executed by landlords, tenants, bailees, warehousemen and other Persons party to material contracts relating to any Collateral as to which Administrative Agent shall be granted a Lien for the benefit of Lenders, as requested by Administrative Agent; and

(K) evidence that all other actions necessary or, in the opinion of Administrative Agent, desirable to perfect and protect the first priority Lien created by the Collateral Documents, and to enhance



Administrative Agent's ability to preserve and protect its interests in and access to the Collateral, have been taken (or arrangements therefor satisfactory to Administrative Agent have been made);

(vii) Insurance Policies. Standard lenders' payable endorsements with respect to the insurance policies or other instruments or documents evidencing insurance coverage on the properties of Borrower Parties in accordance with Section 5.14;

(viii) Environmental Review. Such environmental site assessments with respect to the real property of Borrower Parties as shall be requested by Administrative Agent;

(ix) Repayment of Indebtedness. Written evidence that the Existing Credit Agreement has been or concurrently herewith is being terminated and all Liens securing obligations under the Existing Credit Agreement have been or concurrently herewith are being released;

(x) Financial Statements. To the extent not previously delivered to Administrative Agent, the Audited Financial Statements and the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal years ended September 30, 1997, September 30, 1998 and September 30, 1999, and the related consolidated statements of income and cash flows for such fiscal year of Borrower and the unaudited pro forma balance sheet for Borrower and its Subsidiaries as at March 31, 2000 prepared by Borrower and the projections for the next five years;

(xi) Pro Forma Compliance Certificate. A pro forma Compliance Certificate as at March 31, 2000 demonstrating pro forma compliance with Sections 7.17 and 7.18.

(xii) Other Documents. Such other assurances, certificates, documents, consents or opinions as Administrative Agent, Issuing Lender or Requisite Lenders reasonably may require.

(b) Any fees required to be paid on or before the Closing Date shall have been paid, including any such fees arising under or referenced in Sections 2.08 and 10.03.

(c) The representations and warranties made by Borrower herein, or which are contained in any certificate, document or financial or other statement furnished at any time under or in connection herewith or therewith, shall be correct on and as of the Closing Date.

(d) Each Borrower Party shall be in compliance with all the terms and provisions of the Loan Documents to which it is a party, and no Default or Event of Default shall have occurred and be continuing.

(e) Unless waived by Administrative Agent, Borrower shall have paid all Attorney Costs of Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of Attorney Costs as shall constitute its reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings (provided that such estimate

shall not thereafter preclude final settling of accounts between Borrower and Administrative Agent).

4.02 CONDITIONS TO ALL EXTENSIONS OF CREDIT. In addition to any applicable conditions precedent set forth elsewhere in this Section 4 or in Section 2, the obligation of each Lender to honor any Request for Extension of Credit other than a Conversion or Continuation is subject to the following conditions precedent:

(a) the representations and warranties of Borrower contained in Section 5, or which are contained in any certificate, document or financial or other statement furnished at any time under or in connection herewith or therewith, shall be correct on and as of the date of such Extension of Credit, except to the extent that such representations and warranties specifically refer to an earlier date.

(b) no Default or Event of Default exists, or would result from such proposed Extension of Credit.

(c) Administrative Agent shall have timely received a Request for Extension of Credit by Requisite Notice by the Requisite Time therefor.

(d) Administrative Agent shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as Administrative Agent or Requisite Lenders reasonably may require.

Each Request for Extension of Credit by Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of such Extension of Credit.

#### SECTION 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and Lenders that:

5.01 EXISTENCE AND QUALIFICATION; POWER; COMPLIANCE WITH LAWS. Each Borrower Party is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the state of its incorporation or organization, has the power and authority and the legal right to own and operate its properties, to lease the properties it operates and to conduct its business, is duly qualified and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, and is in compliance with all Laws except to the extent that any such nonqualification or noncompliance does not have a Material Adverse Effect.

5.02 POWER; AUTHORIZATION; ENFORCEABLE OBLIGATIONS. Each Borrower Party has the power and authority and the legal right to make, deliver and perform each Loan Document to which it is a party and Borrower has power and

authority to borrow hereunder and has taken all necessary action to authorize the borrowings on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party. No consent or authorization of, filing with, or other act by or in respect of any Governmental Authority, is required in connection with the borrowings hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents. The Loan Documents to which a Borrower Party is a party have been duly executed and delivered by such Borrower Party, and constitute a legal, valid and binding obligation of such Borrower Party, enforceable against such Borrower Party in accordance with their respective terms.

5.03 NO LEGAL BAR. The execution, delivery, and performance by each Borrower Party of the Loan Documents to which it is a party and compliance with the provisions thereof have been duly authorized by all requisite action on the part of such Borrower Party and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) any Organization Documents of such Borrower Party or any of its Subsidiaries, (ii) any applicable Laws, rules, or regulations or any order, writ, injunction, or decree of any Governmental Authority or arbitrator, or (iii) any Contractual Obligation of such Borrower Party or any of its Subsidiaries or by which any of them or any of their property is bound or subject or (b) constitute a default under any such agreement or instrument or (c) result in, or require, the creation or imposition of any Lien on any of the properties of such Borrower Party or any of its Subsidiaries.

5.04 FINANCIAL STATEMENTS; NO MATERIAL ADVERSE EFFECT.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness in accordance with GAAP consistently applied throughout the period covered thereby.

(b) Since the date of the Audited Financial Statements, there has been no event or circumstance which has a Material Adverse Effect.

5.05 LITIGATION. No litigation, investigation or proceeding of or before an arbitrator or Governmental Authority is pending or, to the knowledge of Borrower after due and diligent investigation, threatened against any Borrower Party or any of its Subsidiaries or against any of their properties or revenues which, if determined adversely, has a Material Adverse Effect.

5.06 NO DEFAULT. Neither any Borrower Party nor any of its Subsidiaries are in default under or with respect to any Contractual Obligation which has a Material Adverse Effect, and no Default or Event of Default has occurred and is continuing or will result from the consummation of

this Agreement or any of the other Loan Documents, or the making of the Extensions of Credit hereunder.

5.07 OWNERSHIP OF PROPERTY; LIENS. Each Borrower Party and its Subsidiaries have valid fee or leasehold interests in all real property which they use in their respective businesses, and each Borrower Party and its Subsidiaries have good and marketable title to all their other property, and none of such property is subject to any Lien, except as permitted in Section 7.02.

5.08 TAXES. Each Borrower Party and its Subsidiaries have filed all tax returns which are required to be filed, and have paid, or made provision for the payment of, all taxes with respect to the periods, property or transactions covered by said returns, or pursuant to any assessment received by such Borrower Party or its respective Subsidiaries, except (a) such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained, and (b) immaterial taxes; provided, however, that in each case no material item or portion of property of any Borrower Party or any of its Subsidiaries is in jeopardy of being seized, levied upon or forfeited.

5.09 MARGIN REGULATIONS; INVESTMENT COMPANY ACT; PUBLIC UTILITY HOLDING COMPANY ACT.

(a) No Borrower Party is engaged or will engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Extensions of Credit hereunder will be used for "purchasing" or "carrying" "margin stock" as so defined or for any purpose which violates, or which would be inconsistent with, the provisions of Regulations U or X of such Board of Governors.

(b) No Borrower Party or any of its Subsidiaries (i) is a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.10 ERISA COMPLIANCE.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of

any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that has a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

5.11 INTANGIBLE ASSETS. Each Borrower Party and its Subsidiaries own, or possess the right to use, all trademarks, trade names, copyrights, patents, patent rights, franchises, licenses and other intangible assets that are used in the conduct of their respective businesses as now operated, and none of such items, to the best knowledge of Borrower, conflicts with the valid trademark, trade name, copyright, patent, patent right or intangible asset of any other Person to the extent that such conflict has a Material Adverse Effect.

5.12 COMPLIANCE WITH LAWS. Each Borrower Party and its Subsidiaries are in compliance in all material respects with all Laws that are applicable to it.

5.13 ENVIRONMENTAL COMPLIANCE. Each Borrower Party and its Subsidiaries has conducted a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof Borrower has reasonably concluded that such Environmental Laws and claims do not, individually or in the aggregate, have a Material Adverse Effect.

5.14 INSURANCE. The properties of each Borrower Party and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Borrower Party or such Subsidiary operates.

#### 5.15 COLLATERAL DOCUMENTS.

(a) The provisions of each of the Collateral Documents are effective to create in favor of Administrative Agent for the benefit of Lenders, a legal, valid and enforceable first priority security interest in all right, title and interest of Borrower Parties in the collateral described therein, subject only to Liens permitted under this Agreement.

(b) Each Mortgage when delivered will be effective to grant to Administrative Agent for the benefit of Lenders a legal, valid and enforceable lien on all the right, title and interest of the mortgagor under such Mortgage in the mortgaged property described therein. When each such Mortgage is duly recorded in the offices listed on the schedule to such Mortgage and the mortgage recording fees and taxes in respect thereof are paid and compliance is otherwise had with the formal requirements of state law applicable to the recording of real estate mortgages generally, each such mortgaged property, subject to the encumbrances and exceptions to title set forth therein and any Ordinary Course Liens and except as noted in the title policies delivered to Administrative Agent pursuant to Section 4.01, is subject to a legal, valid, enforceable and perfected first priority lien; and when financing statements have been filed in the offices specified in such Mortgage, such Mortgage also creates a legal, valid, enforceable and perfected first lien on, and security interest in, all right, title and interest of the applicable Borrower Party under such Mortgage in all personal property and fixtures covered by such Mortgage, subject to no other Liens, except the encumbrances and exceptions to title set forth therein and except as noted in the title policies delivered to Administrative Agent pursuant to Section 4.01, and Ordinary Course Liens.

(c) All representations and warranties of Borrower Parties contained in the Collateral Documents are true and correct.

#### 5.16 CAPITALIZATION; SUBSIDIARIES.

As of the Closing Date, after giving effect to the consummation of the transactions contemplated by the Loan Documents, Borrower has no Subsidiaries other than those specifically disclosed in part (a) of Schedule 5.17 hereto and has no equity investments in any other corporation or entity other than those specifically disclosed in part (b) of Schedule 5.17. The capitalization of Borrower's Subsidiaries as of the Closing Date is as set forth on part (a) of Schedule 5.17.

#### 5.17 INSURANCE.

The properties of Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and are similarly situated.

#### 5.18 SWAP OBLIGATIONS.

Neither Borrower nor any of its Subsidiaries has incurred any outstanding obligations under any Swap Contracts, other than Ordinary Course

Swap Obligations. Borrower has undertaken its own independent assessment of its consolidated assets, liabilities and commitments and has considered appropriate means of mitigating and managing risks associated with such matters and has not relied on any swap counterparty or any Affiliate of any swap counterparty in determining whether to enter into any Swap Contract.

5.19 DISCLOSURE. No statement, information, report, representation, or warranty made by any Borrower Party in any Loan Document or furnished to Administrative Agent or any Lender in connection with any Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading.

SECTION 6.  
AFFIRMATIVE COVENANTS

So long as any Obligation remains unpaid or unperformed, or any portion of the Commitments remains outstanding, Borrower shall, and shall (except in the case of Borrower's reporting covenants), cause each Subsidiary to:

6.01 FINANCIAL STATEMENTS. Deliver to Administrative Agent and each Lender, in form and detail satisfactory to Administrative Agent and Requisite Lenders:

(a) as soon as available, but not later than the earlier of (i) five days after the filing thereof with the SEC and (ii) 90 days after the end of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to Requisite Lenders, which report and opinion shall be prepared in accordance with GAAP and shall not be subject to any qualifications or exceptions as to the scope of the audit nor to any qualifications and exceptions not reasonably acceptable to Requisite Lenders; and

(b) as soon as available, but not later than the earlier of (i) five days after the filing thereof with the SEC and (ii) 45 days after the end of each of the first three fiscal quarters of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income and cash flows for such fiscal quarter and for the portion of Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Borrower as fairly presenting the financial condition, results of operations and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

6.02 CERTIFICATES, NOTICES AND OTHER INFORMATION. Deliver to Administrative Agent in form and detail satisfactory to Administrative Agent and Requisite Lenders, with sufficient copies for each Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants certifying such financial statement and stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default under the financial covenants set forth herein or, if any such Default or Event of Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of Borrower;

(c) concurrently with the delivery of the financial statements referred to in Section 6.01(a), (i) a consolidating balance sheet and income statement for such year (which need not be audited) and, in the case of such income statement, setting forth in comparative form the figures for the previous fiscal year, and (ii) a budget for the next succeeding fiscal year;

(d) promptly after request by Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Borrower by independent accountants in connection with the accounts or books of Borrower or any Subsidiary, or any audit of any of them;

(e) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Borrower, and copies of all annual, regular, periodic and special reports and registration statements which Borrower may file or be required to file with the Securities and Exchange Commission under Sections 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to Administrative Agent pursuant hereto;

(f) promptly after the occurrence thereof, notice of any Default or Event of Default;

(g) notice of any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary;

(h) notice of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) any breach or non-performance of, or any default under, a Contractual Obligation of Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Borrower or any Subsidiary; including pursuant to any applicable Environmental Laws;

(i) notice of the occurrence of any of the following events affecting Borrower or any ERISA Affiliate (but in no event more than 10 days after such



event becomes known to an officer of Borrower or any Subsidiary), and deliver to Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Borrower or any ERISA Affiliate with respect to such event:

(i) an ERISA Event;

(ii) a material increase in the Unfunded Pension Liability of any Pension Plan;

(iii) the adoption of, or the commencement of contributions to, any Plan subject to Section 412 of the Code by Borrower or any ERISA Affiliate resulting in a material contribution obligation; or

(iv) the adoption of any amendment to a Plan subject to Section 412 of the Code, if such amendment results in a material increase in contributions or Unfunded Pension Liability; and

(j) notice upon, but in no event later than 15 days after, any officer of Borrower or any Subsidiary becoming aware of (i) any and all enforcement, investigation, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or any Subsidiary or any of their respective properties pursuant to any applicable Environmental Laws which could reasonably be expected to have a Material Adverse Effect, (ii) all other material Environmental Claims, and (iii) any environmental or similar condition on any real property adjoining or in the vicinity of the property of Borrower or any Subsidiary that could reasonably be anticipated to cause such property of Borrower or such Subsidiary or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such property under any Environmental Laws.

(k) promptly after the occurrence thereof, notice of any Material Adverse Effect; and

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower has taken and proposes to take with respect thereto.

6.03 PAYMENT OF TAXES. Pay and discharge when due all taxes, assessments, and governmental charges, Ordinary Course Liens or levies imposed on any Borrower Party or its Subsidiaries or on its income or profits or any of its property, except for any such tax, assessment, charge, or levy which is an Ordinary Course Lien under subsection (b) of the definition of such term.

6.04 PRESERVATION OF EXISTENCE. Preserve and maintain its existence, licenses, permits, rights, franchises and privileges necessary or desirable in the normal conduct of its business, except where failure to do so does not have a Material Adverse Effect.

6.05 MAINTENANCE OF PROPERTIES. Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its

business in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of its properties.

6.06 MAINTENANCE OF INSURANCE. Maintain liability and casualty insurance with financially sound and reputable insurance companies in such amounts with such deductibles and against such risks as is customary for similarly situated businesses.

6.07 COMPLIANCE WITH LAWS.

(a) Comply with the requirements of all applicable Laws and orders of any Governmental Authority, noncompliance with which could reasonably be expected to have Material Adverse Effect.

(b) Conduct its operations and keep and maintain its property in compliance with all Environmental Laws, noncompliance with which has a Material Adverse Effect.

6.08 INSPECTION RIGHTS. At any time during regular business hours and as often as reasonably requested and, in the absence of a Default or Event of Default, with reasonable advance notice and at the Lender's expense, permit Administrative Agent or any Lender, or any employee, agent or representative thereof, to examine, audit and make copies and abstracts from the Borrower Parties' records and books of account and to visit and inspect their properties and to discuss their affairs, finances and accounts with any of their officers and key employees, and, upon request, furnish promptly to Administrative Agent or any Lender true copies of all financial information and internal management reports made available to their senior management.

6.09 KEEPING OF RECORDS AND BOOKS OF ACCOUNT. Keep adequate records and books of account reflecting all financial transactions in conformity with GAAP, consistently applied, and in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Borrower or the applicable Subsidiary.

6.10 COMPLIANCE WITH ERISA. Cause, and cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; and (c) make all required contributions to any Plan subject to Section 412 of the Code.

6.11 COMPLIANCE WITH AGREEMENTS. Promptly and fully comply with all Contractual Obligations to which any one or more of them is a party, except for any such Contractual Obligations (a) the performance of which would cause a Default or Event of Default, (b) then being contested by any of them in good faith by appropriate proceedings, or (c) if the failure to comply therewith does not have a Material Adverse Effect.

6.12 USE OF PROCEEDS. Use the proceeds of Extensions of Credit for lawful general corporate purposes not otherwise in contravention of this Agreement.

## 6.13 FURTHER ASSURANCES.

(a) Borrower shall ensure that all written information, exhibits and reports furnished to Administrative Agent or Lenders do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not misleading in light of the circumstances in which made, and will promptly disclose to Administrative Agent and Lenders and correct any material defect or error that is discovered therein or in any Loan Document or in the execution, acknowledgment or recordation thereof.

(b) Promptly upon request by Administrative Agent or the Required Lenders, Borrower shall (and shall cause any of its Subsidiaries to) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments Administrative Agent or such Lenders, as the case may be, may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents, (iii) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to Administrative Agent and Lenders the rights granted or now or hereafter intended to be granted to Lenders under any Loan Document or under any other document executed in connection therewith.

## 6.14 ADDITIONAL GUARANTIES AND PERSONAL PROPERTY PLEDGE.

Effective upon any Person becoming a Domestic Subsidiary (other than any Domestic Subsidiary that is not a Material Subsidiary), such Person shall (i) join as a guarantor under the Subsidiary Guaranty and join the Security Agreement pursuant to amendments thereto in form and substance acceptable to Administrative Agent and (ii) provide to Borrower an intercompany note to the extent intercompany loans from Borrower to such Subsidiary exist and such loan is evidenced by a note, which note shall be pledged to Collateral Agent pursuant to the Pledge Agreement; provided, that any Domestic Subsidiary which does not become a party to the Subsidiary Guaranty and the Security Agreement because it does not satisfy the requirement in the parenthetical clause above shall execute the Subsidiary Guaranty and the Security Agreement if it subsequently acquires sufficient assets to satisfy such requirement; provided, further, that if all Domestic Subsidiaries which are not party to the Subsidiary Guaranty and the Security Agreement hold 5.0% or more of the total assets of Borrower and its Subsidiaries, then such Domestic Subsidiaries shall promptly execute the Subsidiary Guaranty and the Security Agreement so that, upon such execution, such 5.0% threshold is no longer exceeded. Borrower shall promptly notify Administrative Agent at any time at which, in accordance with this Section 6.14, any Subsidiary shall be required to join as a guarantor under the Subsidiary Guaranty and the Security Agreement.

#### 6.15 ADDITIONAL REAL PROPERTY.

Concurrent with (a) the acquisition by Borrower or any Domestic Subsidiary of any parcel of property in the United States which has a fair market value in excess of \$1,000,000 or (b) the acquisition or lease by Borrower or any Domestic Subsidiary of any parcel of property which, in Administrative Agent's determination, is otherwise of significant value to the operations of Borrower and its Subsidiaries, unless the Required Lenders shall otherwise direct, Borrower shall, or shall cause such Domestic Subsidiary to, execute and deliver to Administrative Agent a Mortgage on such parcel or leasehold substantially in the form of the applicable Mortgages executed and delivered on the date hereof, together with such other of the items specified in Section 4.01(a)(vi) as shall be applicable thereto, in each case in form and substance reasonably acceptable to Administrative Agent.

#### 6.16 ADDITIONAL PLEDGE.

Effective upon any Person becoming a Subsidiary, Borrower shall, or shall cause the shareholder or shareholders thereof, to pledge the stock or other equity interests thereof to Collateral Agent pursuant to documentation reasonably acceptable to Administrative Agent; provided, that such shareholder shall only be required to pledge 65% of the equity interests of any Subsidiary which is not a Domestic Subsidiary.

#### 6.17 GOVERNMENT CONTRACTS.

Borrower shall (i) deliver or cause to be delivered to Administrative Agent a list in the form of Schedule 6.17 of each Government Contract and Government Subcontract which has a remaining contract value in excess of \$1,000,000, and any amendments thereto, to which Borrower or any of its Subsidiaries is a party and (ii) notify Administrative Agent of (A) the name and address of any surety with respect to any such Government Contract or Subcontract to which Borrower or any of its Subsidiaries is a party and (B) the cancellation or early termination of any of such Government Contracts or, Subcontracts.

#### 6.18 INTELLECTUAL PROPERTY PLEDGE.

Upon the occurrence of a Default or Event of Default and at the request of Administrative Agent, Borrower shall, and shall cause its Subsidiaries to, execute and file assignment agreements with the United States Patent and Trademark Office providing a first priority security interest in intellectual property Collateral in favor of the Administrative Agent.

#### 6.19 ENVIRONMENTAL INSPECTION UPDATES.

Upon the occurrence of a Default or Event of Default and at the request of Administrative Agent, Borrower shall, and shall cause its Subsidiaries to, at Borrower's expense, request environmental site assessments with respect to the real property of Borrower Parties from an environmental auditing firm acceptable to Administrative Agent.

SECTION 7.  
NEGATIVE COVENANTS

So long as any Obligations remain unpaid or unperformed, or any portion of the Commitments remains outstanding, Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 INDEBTEDNESS. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.01 (but not any refinancings, refundings, renewals or extensions thereof);

(c) Indebtedness consisting of Guaranty Obligations permitted pursuant to Section 7.07;

(d) Indebtedness incurred in connection with leases permitted pursuant to Section 7.06;

(e) (i) unsecured Indebtedness owed to Borrower by any Subsidiary so long as it is not evidenced by a note and is incurred in accordance with Section 7.05 and (ii) unsecured Indebtedness owed by Borrower or any Subsidiary to a Subsidiary, provided, that the aggregate outstanding principal amount of all such Indebtedness owed by Borrower or any Subsidiary to Subsidiaries that are not party to the Subsidiary Guaranty shall not at any time exceed \$10,000,000;

(f) Indebtedness incurred in connection with the PTI TROL Documents (and any renewals or extensions thereof);

(g) Ordinary Course Indebtedness; and

(h) Other Indebtedness not exceeding \$10,000,000 in the aggregate at any time.

7.02 LIENS. Incur, assume or suffer to exist, any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01;

(c) Ordinary Course Liens;

(d) Liens on assets of corporations which become Subsidiaries after the date of this Agreement, provided, however, that such Liens existed at the time the respective corporations became Subsidiaries and were not created in anticipation thereof and the obligations secured by all such Liens in the aggregate at any time outstanding do not exceed (i) \$10,000,000, less (ii) amounts outstanding under paragraphs (e) and (h);

(e) purchase money security interests on any property acquired or held by Borrower or its Subsidiaries, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided that (i) any such Lien attaches to such property concurrently with or within 20 days after the acquisition thereof, (ii) such Lien attaches solely to the property so acquired in such transaction and other like assets in respect of which financing was provided by the same lender to the obligor of such Indebtedness, (iii) the principal amount of the debt secured thereby does not exceed 100% of the cost of such property, and (iv) the principal amount of the Indebtedness secured by any and all such purchase money security interests shall not at any time exceed, together with Indebtedness permitted under Section 7.01(d), (i) \$10,000,000, less (ii) amounts outstanding under paragraphs (d) and (h);

(f) Liens securing obligations in respect of capital leases on assets subject to such leases, provided that such capital leases are otherwise permitted hereunder;

(g) Liens pursuant to the PTI TROL Documents to secure the PTI TROL;  
and

(h) Liens securing Indebtedness of Subsidiaries that are not Domestic Subsidiaries provided that the principal amount of the Indebtedness secured by any and all such Liens shall not at any time exceed (i) \$10,000,000, less (ii) amounts outstanding under paragraphs (d) and (e).

7.03 FUNDAMENTAL CHANGES. Merge or consolidate with or into any Person or liquidate, wind-up or dissolve itself, or permit or suffer any liquidation or dissolution or sell all or substantially all of its assets, except, that so long as no Default or Event of Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) Borrower provided that Borrower shall be the continuing or surviving corporation, (ii) any one or more Subsidiaries, and (iii) any joint venture, partnership or other Person, so long as such joint venture, partnership and other Person will, as a result of making such merger and all other contemporaneous related transactions, become a Subsidiary; provided that when any wholly-owned Subsidiary is merging into another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person and provided, further, that if one of the merging Persons is a Guarantor, the continuing or surviving Person is a Guarantor; and

(b) any Subsidiary may sell all or substantially all of its assets (upon voluntary liquidation or otherwise), to Borrower or to another Subsidiary; provided that when any wholly-owned Subsidiary is selling all or substantially all of its assets to another Subsidiary, the Subsidiary acquiring such assets shall be a wholly-owned Subsidiary.

7.04 DISPOSITIONS. Make any Dispositions, except:

(a) Ordinary Course Dispositions;

(b) Dispositions permitted by Section 7.03;

(c) sale/leaseback transactions involving an aggregate consideration not to exceed \$10,000,000 after the date hereof; and

(d) Dispositions not otherwise permitted hereunder which are made for fair market value; provided, that (i) at the time of any Disposition, no Event of Default shall exist or shall result from such Disposition (ii) the aggregate value of all assets sold in any Disposition or series of related Dispositions shall not exceed 15% of the total assets of Borrower and its Subsidiaries and (iii) the aggregate value of all assets so sold by Borrower and its Subsidiaries after the date hereof, shall not exceed \$25,000,000 provided that to the extent that no Default or Event of Default then exists and Borrower delivers a certificate to Administrative Agent on or prior to the date of the Disposition stating that the Net Proceeds shall be used to purchase assets used in the same or similar line of business of Borrower or any of its Subsidiaries within 365 days following the date of such Disposition; the Disposition shall not reduce the \$25,000,000 limit provided, further, if all or any portion of such Net Proceeds not deemed to reduce the \$25,000,000 limit are not so used within such 365 day period, the \$25,000,000 limit shall automatically be reduced by an amount equal to such remaining portion on the last day of such 365 day period to the extent that Net Proceeds not so reinvested or deemed to reduce the \$25,000,000 limit.

7.05 INVESTMENTS. Make any Investments, except:

(a) Investments existing on the date hereof and listed on Schedule 7.05;

(b) Ordinary Course Investments;

(c) Investments permitted by Section 7.03;

(d) Investments incurred in order to consummate Acquisitions otherwise permitted herein, provided that (i) the cash consideration for any Acquisition or series of related Acquisitions shall not exceed \$25,000,000 (ii) such Acquisitions are undertaken in accordance with all applicable Laws, (iii) the prior, effective written consent or approval to such Acquisition of the board of directors or equivalent governing body of the acquiree is obtained, (iv) Borrower provides Administrative Agent and Lenders with a certificate at least ten days prior to the consummation of such Acquisition evidencing that, after giving effect to such Acquisition, (A) its Leverage Ratio would be at least equal to that required pursuant to Section 7.17 and its Minimum Consolidated EBITDA would be at least equal to that required pursuant to Section 7.18 as of such date (in each case as determined on a pro forma basis as of the last day of the preceding fiscal quarter) and (B) the Outstanding Obligations on the date such Acquisition is expected to be consummated are at least \$7,500,000 less than the combined Commitments, (v) the Person or business which is the subject of such Acquisition is in the same or similar line of business as Borrower and its Subsidiaries, and (vi) such Acquisition consists exclusively of (A) assets located in the United States or (B) a Person organized under the laws of the United States or any state thereof;

(e) advances to vendors of Borrower and its Subsidiaries, or suppliers to such vendors, to enable such vendors and suppliers to purchase goods or

parts to be processed and sold to Borrower and its Subsidiaries in the ordinary course of business and consistent with past practices;

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(g) Investments (i) by Borrower or any Subsidiary in Subsidiaries to the extent not permitted under clause (c) above and (ii) incurred in order to consummate Acquisitions of (x) assets located outside the United States or (y) Persons which are not organized under the laws of the United States or any state thereof; provided, that the cash consideration for any such Acquisition or series of related Acquisitions shall not exceed \$25,000,000; provided, further, the aggregate cash consideration paid therefor after the date hereof shall not exceed \$35,000,000; and provided, further, that any such Investment made in order to consummate an Acquisition shall be made in compliance with clauses (ii), (iii), (iv) and (v) of paragraph (d) above; and

(h) other Investments not exceeding \$10,000,000 in the aggregate after the Closing Date.

7.06 LEASE OBLIGATIONS. Create or suffer to exist any obligations for the payment of rent for any property under lease or agreement to lease, except:

(a) operating leases for real or personal property in existence on the Closing Date or entered into by Borrower or any Subsidiary after the Closing Date in the ordinary course of business; provided that the aggregate annual lease payments for all such operating leases shall not exceed \$8,000,000; and

(b) leases entered into by Borrower or any Subsidiary after the Closing Date pursuant to sale-leaseback transactions permitted under Section 7.04.

7.07 GUARANTY OBLIGATIONS.

Create, incur, assume or suffer to exist any Guaranty Obligations except:

(a) endorsements for collection or deposit in the ordinary course of business;

(b) Ordinary Course Swap Obligations;

(c) Guaranty Obligations of Borrower and its Subsidiaries existing as of the Closing Date and listed in Schedule 7.01;

(d) Guaranty Obligations with respect to Indebtedness of Borrower or of Borrower's direct or indirect wholly-owned Subsidiaries permitted pursuant to Section 7.01;



(e) Guaranty Obligations with respect to Surety Instruments incurred by Borrower and its Subsidiaries (including on behalf of third parties) in the ordinary course of business; and

(f) Guaranty Obligations with respect to performance guaranties of obligations of Subsidiaries incurred by Borrower and its Subsidiaries in the ordinary course of business.

7.08 RESTRICTED PAYMENTS. Make any Restricted Payments except:

(a) purchases, redemptions or other acquisitions of shares of Borrower's common stock or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock; and

(b) declarations or payments of cash dividends to Borrower's stockholders and purchases, redemptions or other acquisitions of shares of Borrower's Capital Stock or warrants, rights or options to acquire any such shares for cash and computed on a cumulative consolidated basis; provided, that, (i) all such payments made in any period of four fiscal quarters (ending with the fiscal quarter in which any such payment is made) shall not exceed \$10,000,000, (ii) all such payments made between the Closing Date and the Maturity Date shall not exceed \$25,000,000 and (iii) immediately after giving effect to such proposed action, no Default or Event of Default would exist (determined with respect to Sections 7.18 and 7.19 on a pro forma basis as of the last day of the previous fiscal quarter).

7.09 ERISA. At any time engage in a transaction which could be subject to Sections 4069 or 4212(c) of ERISA, or permit any Pension Plan to (a) engage in any non-exempt "prohibited transaction" (as defined in Section 4975 of the Code); (b) fail to comply with ERISA or any other applicable Laws; or (c) incur any material "accumulated funding deficiency" (as defined in Section 302 of ERISA), which, with respect to each event listed above, has a Material Adverse Effect.

7.10 CHANGE IN NATURE OF BUSINESS. Make any change in the nature of the business of any Borrower Party as conducted and as proposed to be conducted as of the date hereof, provided that any Borrower Party may enter into any business substantially similar, related or incidental to the existing business of such Borrower Party.

7.11 TRANSACTIONS WITH AFFILIATES. Enter into any transaction of any kind with any Affiliate of Borrower other than arm's-length transactions with Affiliates that are otherwise permitted hereunder and except for:

(a) employment or severance agreements entered into by Borrower or any of its Subsidiaries in the ordinary course of business;

(b) transactions between or among Borrower and/or its Subsidiaries in the ordinary course of business;

(c) the payment of reasonable directors' fees and benefits, provided that the amount of such fees and benefits paid to any Affiliate does not

exceed the amount of such fees and benefits paid to any Person who is not otherwise an Affiliate of Borrower;

(d) payments permitted pursuant to Section 7.08 and transactions permitted pursuant to Section 7.05 or Section 7.07;

(e) the provision of officers' and directors' indemnification and insurance in the ordinary course of business to the extent permitted by applicable law; and

(f) the payment of employee salaries, bonuses and employee benefits in the ordinary course of business.

7.12 HOSTILE ACQUISITIONS. Use the proceeds of any Loan in connection with the acquisition of a voting interest of five percent or more in any Person if such acquisition is opposed by the board of directors or management of such Person unless (a) Borrower has given Administrative Agent (who shall promptly notify each Lender) five Business Days' prior notice thereof and (b) no Lender shall have, within that period, notified Administrative Agent (who shall promptly notify Borrower) not consented to the use of the proceeds of such Loan for that purpose.

7.13 LIMITATIONS ON UPSTREAMING. Agree to any restriction or limitation on the making of Restricted Payments or transferring of assets from any Subsidiary to Borrower.

7.14 MARGIN REGULATIONS. No Borrower Party shall use the proceeds of any Extensions of Credit hereunder for "purchasing" or "carrying" "margin stock" as so defined or for any purpose which violates, or which would be inconsistent with, the provisions of Regulations U or X of such Board of Governors.

#### 7.15 ACCOUNTING CHANGES.

Borrower shall not, and shall not suffer or permit any Subsidiary to, (a) make any significant change in accounting treatment or reporting practices, except (i) as required by GAAP, (ii) a change in the depreciation method employed, (iii) a change in a Subsidiary's accounting treatment or reporting practices to conform the accounting practices or reporting practices of newly acquired Subsidiaries to the methods used by Borrower, and (iv) any other change which does not affect the calculations required to determine compliance with Section 7.18, or 7.19, or (b) change the fiscal year of Borrower or of any Subsidiary.

#### 7.16 AMENDMENTS TO CHARTER AND AGREEMENTS; SUBORDINATED INDEBTEDNESS.

Borrower will not, nor will it permit any Subsidiary to, (a) make any amendment or modification to any indenture, notes or other agreement evidencing or governing any subordinated Indebtedness, (b) directly or indirectly prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any such Indebtedness, except that Borrower may pay the PTI TROL on the scheduled maturity date therefor in accordance with the terms thereof as in effect on the date of this Agreement or (c) make any amendment

or modification to any terms or provisions of its Organizational Documents which is materially adverse to Administrative Agent or Lenders without the prior written consent of the Required Lenders.

#### 7.17 LEVERAGE RATIO.

Borrower shall not permit its Leverage Ratio as determined as of the last day of each fiscal quarter for the immediately preceding four fiscal quarters in any period set forth below to be greater than the ratio set forth below for such period:

| Period<br>-----         | Ratio<br>----- |
|-------------------------|----------------|
| 4/01/00 through 3/31/01 | 3.00:1.0       |
| 4/01/01 through 3/31/02 | 3.00:1.0       |
| 4/01/02 through 3/31/03 | 2.75:1.0       |
| 4/01/03 through 3/31/04 | 2.50:1.0       |
| 4/01/04 and thereafter  | 2.25:1.0       |

#### 7.18 MINIMUM CONSOLIDATED EBITDA.

Borrower shall not permit its Consolidated EBITDA determined as of the last day of each fiscal quarter for the immediate preceding four fiscal quarters to be less than the sum of (a) \$20,000,000 plus (b) the lesser of (i) 80% of Acquired Cash Flow or (ii) \$10,000,000.

#### 7.19 NO PREFERRED STOCK.

Borrower shall not, and shall not suffer or permit any Subsidiary to, issue any additional Capital Stock other than in the case of Borrower, (i) additional shares of its common stock and (ii) shares of its preferred stock issued in a public offering registered under the Securities Act of 1933; provided that any such preferred stock shall not be subject to any mandatory redemption or repurchase provisions that would require redemption or repurchase thereof on or prior to September 30, 2005.

7.20 CHANGE IN AUDITORS. Change the certified public accountants auditing the books of Borrower except to certified public accountants of nationally recognized standing reasonably acceptable to Requisite Lenders.

#### 7.21 NEGATIVE PLEDGES.

Borrower shall not, nor will it permit any Subsidiary to, agree to or become bound by any agreement or other arrangement that would restrict or impair the ability of Borrower or any Subsidiary to grant Administrative Agent the Liens contemplated under the Collateral Documents; provided, however, that any agreement, note, indenture or other instrument entered into by Borrower or any Subsidiary in connection with a Lien permitted by the terms of Section 7.02 may prohibit the creation of any other Lien on the items of property which are the subject of such permitted Lien.

SECTION 8.  
EVENTS OF DEFAULT AND REMEDIES

8.01 EVENTS OF DEFAULT. Any one or more of the following events shall constitute an Event of Default:

(a) Borrower fails to pay any principal on any Outstanding Obligation (other than fees) as and on the date when due; or

(b) Borrower fails to pay any interest on any Outstanding Obligation or any commitment fees due hereunder within three days after the date when due; or fails to pay any other fees or amount payable to Administrative Agent or any Lender under any Loan Document within five days after the date due; or

(c) Any default occurs in the observance or performance of any agreement contained in Section 6.01, 6.02, 6.04, 6.08 or 7; or

(d) The occurrence of an Event of Default (as such term is or may hereafter be specifically defined in any other Loan Document) under any other Loan Document; or any Borrower Party fails to perform or observe any other covenant or agreement (not specified in subsections (a), (b) or (c) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(e) Any representation or warranty in any Loan Document or in any certificate, agreement, instrument or other document made or delivered by any Borrower Party pursuant to or in connection with any Loan Document proves to have been incorrect when made or deemed made; or

(f) (i) Any Borrower Party (x) defaults in any payment when due of principal of or interest on any Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount in excess of the Threshold Amount or (y) defaults in the observance or performance of any other agreement or condition relating to any Indebtedness (other than Indebtedness hereunder) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, Indebtedness having an aggregate principal amount in excess of the Threshold Amount to be demanded or become due (automatically or otherwise) prior to its stated maturity, or any Guaranty Obligation in such amount to become payable or cash collateral in respect thereof to be demanded, or any Borrower Party is unable or admits in writing its inability to pay its debts as they mature; or (ii) the occurrence under any Swap Contract of an Early Termination Date (as defined in such Swap Contract) resulting from (x) any event of default under such Swap Contract as to which Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (y) the occurrence of any Termination Event under such Swap Contract (as defined therein) as to which Borrower or any Subsidiary is an Affected Party (as so defined) as a result of which, in either event, the Swap Termination Value owed by Borrower or such Subsidiary is greater than the Threshold Amount; or (iii) Borrower or any Subsidiary fails to perform or observe any condition or covenant under any

contract providing for the issuance of, or reimbursement of amounts in respect of, Surety Instruments (other than non-surety Letters of Credit), which in such event requires the making of payments, in the aggregate in excess of the Threshold Amount, net of the proceeds of insurance policies and indemnity agreements in favor of Borrower or any Subsidiary and received or reasonably expected to be received thereby; or (iv) the occurrence under any PTI TROL Document of any Event of Default (as defined in the PTI TROL Participation Agreement); or

(g) Any Loan Document, at any time after its execution and delivery and for any reason other than the agreement of all Lenders or satisfaction in full of all the Obligations, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid or unenforceable in any respect; or any Borrower Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(h) Any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to Liens permitted under Section 7.02.

(i) (i) A final judgment against any Borrower Party is entered for the payment of money in excess of the Threshold Amount, or any non-monetary final judgment is entered against any Borrower Party which has a Material Adverse Effect and, in each case, if such judgment remains unsatisfied without procurement of a stay of execution within (A) 30 calendar days after the date of entry of judgment or, (B) if earlier, five days prior to the date of any proposed sale, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 calendar days after its issue or levy; or

(j) Any Borrower Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under Debtor Relief Laws, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of that Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under Debtor Relief Laws relating to any such Person or to all or any part of its property is instituted without the consent of that Person and continues undischarged or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(k) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; (ii) the aggregate amount of Unfunded Pension Liability

among all Pension Plans at any time exceeds the Threshold Amount; or (iii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(l) There occurs any Change of Control of Borrower; or

(m) Any Governmental Authority revokes or fails to renew any license, permit or franchise of Borrower or any Material Subsidiary, or Borrower or any Material Subsidiary for any reason loses any license, permit or franchise, or Borrower or any Material Subsidiary suffers the imposition of any restraining order, escrow, suspension or impound of funds in connection with any proceeding (judicial or administrative) with respect to any license, permit or franchise, and any such event, results in, or could reasonably be expected to result in, a Material Adverse Effect; or

(n) Any Guarantor fails in any material respect to perform or observe any term, covenant or agreement in the Subsidiary Guaranty; or the Subsidiary Guaranty is for any reason partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or any Guarantor or any other Person contests in any manner the validity or enforceability thereof or denies that it has any further liability or obligation thereunder; or any event described at paragraph (j) of this Section occurs with respect to any Guarantor; or

(o) (i) any provision of any Collateral Document shall for any reason cease to be valid and binding on or enforceable against Borrower or any Subsidiary party thereto or Borrower or any Subsidiary shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or

(ii) any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in the Collateral purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to Liens permitted under this Agreement.

8.02 REMEDIES UPON EVENT OF DEFAULT. Without limiting any other rights or remedies of Administrative Agent or Lenders provided for elsewhere in this Agreement, or the other Loan Documents, or by applicable Law, or in equity, or otherwise:

(a) Upon the occurrence, and during the continuance, of any Event of Default other than an Event of Default described in Section 8.01(j):

(i) Requisite Lenders may request Administrative Agent to, and Administrative Agent thereupon shall, terminate the Commitments and/or declare all or any part of the unpaid principal of all Loans, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable, without protest,

presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by Borrower; and

(ii) Issuing Lender may, with the approval of Administrative Agent on behalf of Requisite Lenders, demand immediate payment by Borrower of an amount equal to the aggregate amount of all outstanding Letter of Credit Usage to be held in a Letter of Credit Cash Collateral Account.

8.01(j): (b) Upon the occurrence of any Event of Default described in Section

(i) the Commitments and all other obligations of Administrative Agent or Lenders shall automatically terminate without notice to or demand upon Borrower, which are expressly waived by Borrower;

(ii) the unpaid principal of all Loans, all interest accrued and unpaid thereon and all other amounts payable under the Loan Documents shall be immediately due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which are expressly waived by Borrower; and

(iii) an amount equal to the aggregate amount of all outstanding Letter of Credit Usage shall be immediately due and payable to Issuing Lender without notice to or demand upon Borrower, which are expressly waived by Borrower, to be held in a Letter of Credit Cash Collateral Account.

(c) Upon the occurrence of any Event of Default, Lenders and Administrative Agent, or any of them, without notice to (except as expressly provided for in any Loan Document) or demand upon Borrower, which are expressly waived by Borrower (except as to notices expressly provided for in any Loan Document), may proceed to (but only with the consent of Requisite Lenders) protect, exercise and enforce their rights and remedies under the Loan Documents against any Borrower Party and such other rights and remedies as are provided by Law or equity.

(d) Except as permitted by Section 10.05, no Lender may exercise any rights or remedies with respect to the Obligations without the consent of Requisite Lenders in their sole and absolute discretion. The order and manner in which Administrative Agent's and Lenders' rights and remedies are to be exercised shall be determined by Requisite Lenders in their sole and absolute discretion. Regardless of how a Lender may treat payments for the purpose of its own accounting, for the purpose of computing the Obligations hereunder, payments shall be applied first, to costs and expenses (including Attorney Costs) incurred by Administrative Agent and each Lender, second, to the payment of accrued and unpaid interest on the Loans to and including the date of such application, third, to the payment of the unpaid principal of the Loans, and fourth, to the payment of all other amounts (including fees) then owing to Administrative Agent and Lenders under the Loan Documents, in each case paid pro rata to each Lender in the same proportions that the aggregate Obligations owed to each Lender under the Loan Documents bear to the aggregate Obligations owed under the Loan Documents to all Lenders, without priority or

preference among Lenders. No application of payments will cure any Event of Default, or prevent acceleration, or continued acceleration, of amounts payable under the Loan Documents, or prevent the exercise, or continued exercise, of rights or remedies of Administrative Agent and Lenders hereunder or thereunder or at Law or in equity.

SECTION 9.  
ADMINISTRATIVE AGENT

9.01 APPOINTMENT AND AUTHORIZATION OF ADMINISTRATIVE AGENT.

(a) Each Lender hereby irrevocably (subject to Section 9.09) appoints, designates and authorizes Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Issuing Lender shall act on behalf of Lenders with respect to any Letters of Credit issued by it and the documents associated therewith until such time and except for so long as Administrative Agent may agree at the request of Requisite Lenders to act for such Issuing Lender with respect thereto; provided, however, that Issuing Lender shall have all of the benefits and immunities (i) provided to Administrative Agent in this Section 9 with respect to any acts taken or omissions suffered by Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term "Administrative Agent" as used in this Section 9 included Issuing Lender with respect to such acts or omissions, and (ii) as additionally provided in this Agreement with respect to Issuing Lender.

9.02 DELEGATION OF DUTIES. Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or



attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

9.03 LIABILITY OF ADMINISTRATIVE AGENT. No Administrative Agent-Related Person shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (ii) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Borrower Party or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Borrower Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Administrative Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Borrower Party or any Subsidiary or Affiliate thereof.

9.04 RELIANCE BY ADMINISTRATIVE AGENT.

(a) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Borrower Party), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of Requisite Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Requisite Lenders or all Lenders, if required hereunder, and such request and any action taken or failure to act pursuant thereto shall be binding upon all of Lenders and participants. Where this Agreement expressly permits or prohibits an action unless Requisite Lenders otherwise determine, and in all other instances, Administrative Agent may, but shall not be required to, initiate any solicitation for the consent or a vote of Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender and participant shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by Administrative Agent to each Lender for consent,

approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

9.05 NOTICE OF DEFAULT. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of Lenders, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Administrative Agent will notify Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Default or Event of Default as may be directed by Requisite Lenders in accordance with Section 8; provided, however, that unless and until Administrative Agent has received any such direction, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of Lenders.

9.06 CREDIT DECISION; DISCLOSURE OF INFORMATION BY ADMINISTRATIVE AGENT. Each Lender and participant acknowledges that no Administrative Agent-Related Person has made any representation or warranty to it, and that no act by Administrative Agent hereinafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Borrower Party or any of its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Administrative Agent-Related Person to any Lender or participant as to any matter, including whether Administrative Agent-Related Persons have disclosed material information in their possession. Each Lender, including any Lender by assignment, and each participant represents to Administrative Agent that it has, independently and without reliance upon any Administrative Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower Party and its Subsidiaries and Affiliates, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to any Borrower Party hereunder. Each Lender and participant also represents that it will, independently and without reliance upon any Administrative Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower Party and its Subsidiaries and Affiliates. Except for notices, reports and other documents expressly required to be furnished to Lenders by Administrative Agent herein, Administrative Agent shall not have any duty or responsibility to provide any Lender or participant with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower Party or any of its Subsidiaries or Affiliates which may come into the possession of any Administrative Agent-Related Person.

9.07 INDEMNIFICATION OF ADMINISTRATIVE AGENT. Whether or not the transactions contemplated hereby are consummated, Lenders shall indemnify upon demand each Administrative Agent-Related Person (to the extent not reimbursed by or on behalf of any Borrower Party and without limiting the obligation of any Borrower Party to do so), pro rata, and hold harmless each Administrative Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Administrative Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Person's gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of Requisite Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall reimburse Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Administrative Agent is not reimbursed for such expenses by or on behalf of any Borrower Party. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Administrative Agent.

9.08 ADMINISTRATIVE AGENT IN INDIVIDUAL CAPACITY. Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Borrower Party and its Subsidiaries and Affiliates as though Bank of America were not Administrative Agent or Issuing Lender hereunder and without notice to or consent of Lenders. Lenders and participants acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Borrower Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of any Borrower Party or such Affiliate) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans, Bank of America shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not Administrative Agent or Issuing Lender.

9.09 SUCCESSOR ADMINISTRATIVE AGENT. Administrative Agent may resign as Administrative Agent upon 30 days' notice to Lenders. If Administrative Agent resigns under this Agreement, Requisite Lenders shall appoint from among Lenders a successor administrative agent for Lenders which successor administrative agent shall be consented to by Borrower at all times other than during the existence of an Event of Default (which consent of Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrower, a successor administrative agent from among Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term

"Administrative Agent" shall mean such successor administrative agent and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 9 and Sections 10.03 and 10.13 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as Requisite Lenders appoint a successor agent as provided for above. Notwithstanding the foregoing, however, Bank of America may not be removed as Administrative Agent at the request of Requisite Lenders unless Bank of America shall also simultaneously be replaced as "Issuing Lender" and "Swing Line Lender" hereunder pursuant to documentation in form and substance reasonably satisfactory to Bank of America.

#### 9.10 COLLATERAL MATTERS.

(a) Administrative Agent is authorized on behalf of all Lenders, without the necessity of any notice to or further consent from Lenders, from time to time to take any action with respect to any Collateral or the Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) Lenders irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by Administrative Agent upon any Collateral (i) upon termination of the combined Commitments and payment in full of all Loans and all other Obligations known to Administrative Agent and payable under this Agreement or any other Loan Document; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which Borrower or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to Borrower or any Subsidiary under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by Borrower or such Subsidiary to be, renewed or extended; (v) consisting of an instrument evidencing Indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; or (vi) if approved, authorized or ratified in writing by the Required Lenders or all Lenders, as the case may be, as provided in Section 10.01. Upon request by Administrative Agent at any time, Lenders will confirm in writing Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 9.10(b), provided that the absence of any such confirmation for whatever reason shall not affect Administrative Agent's rights under this Section 9.10.

(c) Each Lender agrees with and in favor of each other (which agreement shall not be for the benefit of Borrower or any Subsidiary) that Borrower's obligation to such Lender under this Agreement and the other Loan

Documents is not and shall not be secured by any real property collateral now or hereafter acquired by such Lender other than the real property described in the Mortgages.

SECTION 10.  
MISCELLANEOUS

10.01 AMENDMENTS; CONSENTS. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, and no consent to any departure by any Borrower Party therefrom shall be effective unless in writing signed by Requisite Lenders and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Except as otherwise expressly provided herein, without the approval in writing of Administrative Agent and all Lenders, no amendment, modification, supplement, termination, waiver or consent may be effective to:

(a) Reduce the amount of principal or required principal payments or prepayments of any Outstanding Obligations; provided, however, that only the consent of Requisite Lenders shall be required in any instance where Lenders have the right to consent to the release price of any property or Persons being Disposed of;

(b) Reduce the rate of interest payable on any Outstanding Obligations or the amount of any fee or other amount payable to any Lender under the Loan Documents (unless consented to by each Lender entitled to receive such fee or other amount), including in each case, any change in the way any financial covenant used to determine the Applicable Amount is calculated;

(c) Waive an Event of Default consisting of the failure of Borrower to pay when due principal, interest or any commitment fee;

(d) Postpone any date fixed for any payment of principal of, prepayment of principal of, or any installment of interest on, any Loan or any installment of any commitment fee, to extend the term of, or, except as described in Sections 2.12 and 10.22, increase the amount of, any Lender's Commitment (it being understood that a waiver of any Event of Default not referred to in subsection (c) above shall require only the consent of Required Lenders);

(e) Amend the definition of "Requisite Lenders" or the provisions of Section 4, Section 9, this Section 10.01 or Section 10.06;

(f) Amend any provision of this Agreement that expressly requires the consent or approval of all Lenders; or

(g) Release all or substantially all of the Collateral;

provided, however, that (i) no amendment, waiver or consent shall, unless in writing and signed by Issuing Lender in addition to Requisite Lenders or all Lenders, as the case may be, affect the rights or duties of Issuing Lender,

(ii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to Requisite Lenders or all Lenders, as the case may be, affect the rights or duties of Administrative Agent, (iii) no amendment, waiver or consent shall, unless in writing and signed by Swing Line Lender in addition to Requisite Lenders or all Lenders, as the case may be, affect the rights or duties of Swing Line Lender, and (iv) any fee letters may be amended, or rights or privileges thereunder waived, in a writing executed by the parties thereto. Any amendment, modification, supplement, termination, waiver or consent pursuant to this Section shall apply equally to, and shall be binding upon, all Lenders and Administrative Agent.

10.02 TRANSMISSION AND EFFECTIVENESS OF COMMUNICATIONS AND SIGNATURES.

(a) MODES OF DELIVERY. Except as otherwise provided in any Loan Document, notices, requests, demands, directions, agreements and documents delivered in connection with the Loan Documents (collectively, "communications") shall be transmitted by Requisite Notice to the number and address set forth on Schedule 10.02, may be delivered by the following modes of delivery, and shall be effective as follows:

| MODE OF DELIVERY  | EFFECTIVE ON EARLIER OF ACTUAL RECEIPT AND:                                 |
|-------------------|-----------------------------------------------------------------------------|
| Courier           | Scheduled delivery date                                                     |
| Facsimile         | When transmission in legible form complete                                  |
| Mail              | Fourth Business Day after deposit in U.S. mail first class postage pre-paid |
| Personal delivery | When received                                                               |
| Telephone         | When conversation completed                                                 |
| Electronic Mail   | When received                                                               |

provided, however, that communications delivered to Administrative Agent pursuant to Section 2 shall not be effective until actually received by Administrative Agent.

(b) RELIANCE BY ADMINISTRATIVE AGENT AND LENDERS. Administrative Agent and Lenders shall be entitled to rely and act on any communications purportedly given by or on behalf of any Borrower Party even if (i) such communications (A) were not made in a manner specified herein, (B) were incomplete or (C) were not preceded or followed by any other notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any subsequent related communications provided for herein. Borrower shall indemnify Administrative Agent and Lenders from any loss, cost, expense or liability as a result of relying on any communications permitted herein.

(c) EFFECTIVENESS OF FACSIMILE DOCUMENTS AND SIGNATURES. Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of

any such documents and signatures shall, subject to applicable Law, have the same force and effect as hardcopies with manual signatures and shall be binding on all Borrower Parties and Administrative Agent and Lenders. Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed hardcopy thereof; provided, however, that the failure to request or deliver any such manually-signed hardcopy shall not affect the effectiveness of any facsimile document or signature.

(d) EFFECTIVENESS OF ELECTRONIC MAIL. Electronic mail and internet and intranet websites may be used to distribute routine communications, such as financial statements and other information and to distribute agreements and other documents to be signed by Lenders; provided, however, that no Request for Extension of Credit or executed or legally-binding notice, agreement, waiver, amendment or other communication may be sent by electronic mail.

10.03 ATTORNEY COSTS, EXPENSES AND TAXES. Borrower agrees (a) to pay or reimburse Administrative Agent for all costs and expenses incurred in connection with the development, preparation, negotiation and execution of the Loan Documents, and the development, preparation, negotiation and execution of any amendment, waiver, consent, supplement or modification to, any Loan Documents, and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, and (b) to pay or reimburse Administrative Agent and each Lender for all costs and expenses incurred in connection with any refinancing, restructuring, reorganization (including a bankruptcy reorganization) and enforcement or attempted enforcement, or preservation of any rights under any Loan Documents, and any other documents prepared in connection herewith or therewith, or in connection with any refinancing, or restructuring of any such documents in the nature of a "workout" or of any insolvency or bankruptcy proceeding, including Attorney Costs. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by Administrative Agent and the cost of independent public accountants and other outside experts retained by Administrative Agent or any Lender. The agreements in this Section shall survive repayment of all Obligations.

#### 10.04 BINDING EFFECT; ASSIGNMENT.

(a) This Agreement and the other Loan Documents to which Borrower is a party will be binding upon and inure to the benefit of Borrower, Administrative Agent, Lenders and their respective successors and assigns, except that, Borrower may not assign its rights hereunder or thereunder or any interest herein or therein without the prior written consent of all Lenders and any such attempted assignment shall be void. Any Lender may at any time pledge its Note or any other instrument evidencing its rights as a Lender under this Agreement to a Federal Reserve Bank, but no such pledge shall release such Lender from its obligations hereunder or grant to such Federal Reserve Bank the rights of a Lender hereunder absent foreclosure of such pledge.

(b) From time to time following the Closing Date, each Lender may assign to one or more Eligible Assignees all or any portion of its Commitment

and/or Extensions of Credit; provided that (i) such assignment, if not to a Lender or an Affiliate of the assigning Lender, shall be consented to by Borrower at all times other than during the existence of a Default or Event of Default and by Administrative Agent, Issuing Lender and Swing Line Lender (which approval of Borrower shall not be unreasonably withheld or delayed), (ii) a copy of a duly signed and completed Assignment and Acceptance shall be delivered to Administrative Agent, (iii) except in the case of an assignment (A) to an Affiliate of the assigning Lender or to another Lender or (B) of the entire remaining Commitment of the assigning Lender, the portion of the Commitment assigned shall not be less than the Minimum Amount therefor, and (iv) the effective date of any such assignment shall be as specified in the Assignment and Acceptance, but not earlier than the date which is five Business Days after the date Administrative Agent has received the Assignment and Acceptance. Upon obtaining any consent required as set forth in the prior sentence, any forms required by Section 10.21 and payment of the requisite fee described below, the assignee named therein shall be a Lender for all purposes of this Agreement to the extent of the Assigned Interest (as defined in such Assignment and Acceptance), and the assigning Lender shall be released from any further obligations under this Agreement to the extent of such Assigned Interest. Borrower agrees that it shall execute and deliver upon request (against delivery by the assigning Lender to Borrower of any Note) to such assignee Lender, one or more Notes evidencing such assignee Lender's Loans, and to the assigning Lender, if requested, one or more Notes evidencing Loans under any Commitment retained by the assigning Lender. Administrative Agent's consent to any assignment shall not be deemed to constitute any representation or warranty by any Administrative Agent-Related Person as to any matter. Administrative Agent shall record the information contained in the Assignment and Acceptance in the Register. For purposes hereof, each mutual fund that is an Affiliate of a Lender shall be deemed to be a single Eligible Assignee, whether or not such fund is managed by the same fund manager as other mutual funds that are Affiliates of the same Lender.

(c) After receipt of a completed Assignment and Acceptance, and receipt of an assignment fee of \$3,500 from such Eligible Assignee and/or such assigning Lender (including in the case of assignments to Affiliates of assigning Lenders), Administrative Agent shall, promptly following the effective date thereof, provide to Borrower and Lenders a revised Schedule 10.02 giving effect thereto.

(d) Each Lender may from time to time, without the consent of any other Person, grant participations to one or more other Person (including another Lender) all or any portion of its Pro Rata Share of its Commitment and/or Extensions of Credit; 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 financial institutions shall not be a Lender hereunder for any purpose except, if the participation agreement so provides, for the purposes of Section 3 (but only to the extent that the cost of such benefits to Borrower does not exceed the cost which Borrower would have incurred in respect of such Lender absent the participation) and subject to Sections 10.05 and 10.06, (iv) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and



obligations under this Agreement, (v) the participation agreement shall not restrict an increase in the combined Commitments or in the granting Lender's Commitment or Pro Rata Share, so long as the amount of the participation interest is not increased, and (vi) the consent of the holder of such participation interest shall not be required for amendments or waivers of provisions of the Loan Documents; provided, however, that the assigning Lender may, in any agreement with a participant, give such participant the right to consent to any matter which (A) extends the Maturity Date as to such participant or any other date upon which any payment of money is due to such participant, (B) reduces the rate of interest owing to such participant, any fee or any other monetary amount owing to such participant, or (C) reduces the amount of any installment of principal owing to such participant. Any Lender that sells a participation to any Person that is a "foreign corporation, partnership or trust" within the meaning of the Code shall include in its participation agreement with such Person a covenant by such Person that such Person will comply with the provisions of Section 10.21 as if such Person were a Lender and provide that Administrative Agent and Borrower shall be third party beneficiaries of such covenant.

10.05 SET-OFF. In addition to any rights and remedies of Administrative Agent and Lenders or any assignee or participant of any Lender or any Affiliate thereof (each, a "Proceeding Party") provided by law, upon the occurrence and during the continuance of any Event of Default, each Proceeding Party is authorized at any time and from time to time, without prior notice to Borrower, any such notice being waived by Borrower to the fullest extent permitted by law, to proceed directly, by right of set-off, banker's lien, or otherwise, against any assets of the Borrower Parties which may be in the hands of such Proceeding Party (including all general or special, time or demand, provisional or other deposits and other indebtedness owing by such Proceeding Party to or for the credit or the account of Borrower) and apply such assets against the Obligations, irrespective of whether such Proceeding Party shall have made any demand therefor and although such Obligations may be unmatured. Each Lender agrees promptly to notify Borrower and Administrative Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

10.06 SHARING OF PAYMENTS. Each Lender severally agrees that if it, through the exercise of any right of setoff, banker's lien or counterclaim against Borrower or otherwise, receives payment of the Obligations held by it of a type owed ratably to the various Lenders that is ratably more than any other Lender receives in payment of those Obligations held by such other Lender, then, subject to applicable Laws: (a) such Lender exercising the right of setoff, banker's lien or counterclaim or otherwise receiving such payment shall purchase, and shall be deemed to have simultaneously purchased, from the other Lender a participation in the Obligations held by the other Lender and shall pay to the other Lender a purchase price in an amount so that the share of the Obligations held by each Lender after the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment shall be in the same proportion that existed prior to the exercise of the right of setoff, banker's lien or counterclaim or receipt of payment; and (b) such other adjustments and purchases of participations shall be made from time to time as shall be equitable to ensure that all Lenders share any payment obtained in

respect of the Obligations ratably in accordance with each Lender's share of the Obligations immediately prior to, and without taking into account, the payment; provided that, if all or any portion of a disproportionate payment obtained as a result of the exercise of the right of setoff, banker's lien, counterclaim or otherwise is thereafter recovered from the purchasing Lender by Borrower or any Person claiming through or succeeding to the rights of Borrower, the purchase of a participation shall be rescinded and the purchase price thereof shall be restored to the extent of the recovery, but without interest. Each Lender that purchases a participation in the Obligations pursuant to this Section shall from and after the purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in an Obligation so purchased may exercise any and all rights of setoff, banker's lien or counterclaim with respect to the participation as fully as if Lender were the original owner of the Obligation purchased.

10.07 NO WAIVER; CUMULATIVE REMEDIES.

(a) No failure by any Lender or Administrative Agent to exercise, and no delay by any Lender or Administrative Agent in exercising, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(b) The rights, remedies, powers and privileges herein or therein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. Any decision by Administrative Agent or any Lender not to require payment of any interest (including Default Interest), fee, cost or other amount payable under any Loan Document or to calculate any amount payable by a particular method on any occasion shall in no way limit or be deemed a waiver of Administrative Agent's or such Lender's right to require full payment thereof, or to calculate an amount payable by another method that is not inconsistent with this Agreement, on any other or subsequent occasion.

(c) Except with respect to Section 9.09, the terms and conditions of Section 9 are for the sole benefit of Administrative Agent and Lenders.

10.08 USURY. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excessive interest shall be applied to the principal of the Outstanding Obligations or, if it exceeds the unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate,

allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations.

10.09 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.10 INTEGRATION. This Agreement, together with the other Loan Documents and any letter agreements referred to herein, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of Administrative Agent or Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

10.11 NATURE OF LENDERS' OBLIGATIONS. Nothing contained in this Agreement or any other Loan Document and no action taken by Administrative Agent or Lenders or any of them pursuant hereto or thereto may, or may be deemed to, make Lenders a partnership, an association, a joint venture or other entity, either among themselves or with Borrower or any Affiliate of Borrower. Each Lender's obligation to make any Extension of Credit pursuant hereto is several and not joint or joint and several. A default by any Lender will not increase the Pro Rata Share attributable to any other Lender.

10.12 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties made hereunder and in any other Loan Document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, notwithstanding any investigation made by Administrative Agent or any Lender or on their behalf.

10.13 INDEMNITY BY BORROWER. Whether or not the transactions contemplated hereby are consummated, Borrower agrees to indemnify, save and hold harmless each Administrative Agent-Related Person and each Lender and their respective Affiliates, directors, officers, agents, attorneys and employees (collectively the "Indemnitees") from and against: (a) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee by any Person (other than Administrative Agent or any Lender) relating directly or indirectly to a claim, demand, action or cause of action that such Person asserts or may assert against any Borrower Party, any of their Affiliates or any of their officers or directors; (b) any and all claims, demands, actions or causes of action arising out of or relating to, the Loan Documents, any predecessor loan documents, the Commitments, the use or contemplated use of the proceeds of any Loan, or the relationship of any Borrower Party, Administrative Agent and Lenders under this Agreement; (c) any administrative or investigative proceeding by any Governmental Authority arising out of or related to a claim, demand, action or cause of action

described in subsection (a) or (b) above; and (d) any and all liabilities, losses, costs or expenses (including Attorney Costs) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, whether or not arising out of the negligence of an Indemnitee, whether or not an Indemnitee is a party to such claim, demand, action, cause of action or proceeding (all the foregoing, collectively, the "Indemnified Liabilities"); provided that no Indemnitee shall be entitled to indemnification for any loss caused by its own gross negligence or willful misconduct or for any loss asserted against it by another Indemnitee. The agreements in this Section shall survive repayment of all Obligations.

10.14 NONLIABILITY OF LENDERS. Borrower acknowledges and agrees that:

(a) Any inspections of any property of Borrower made by or through Administrative Agent or Lenders are for purposes of administration of the Loan Documents only, and Borrower is not entitled to rely upon the same (whether or not such inspections are at the expense of Borrower);

(b) By accepting or approving anything required to be observed, performed, fulfilled or given to Administrative Agent or Lenders pursuant to the Loan Documents, neither Administrative Agent nor Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Administrative Agent or Lenders;

(c) The relationship between Borrower and Administrative Agent and Lenders is, and shall at all times remain, solely that of borrower and lenders; neither Administrative Agent nor any Lender shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Borrower or its Affiliates, or to owe any fiduciary duty to Borrower or its Affiliates; neither Administrative Agent nor any Lender undertakes or assumes any responsibility or duty to Borrower or its Affiliates to select, review, inspect, supervise, pass judgment upon or inform Borrower or its Affiliates of any matter in connection with their property or the operations of Borrower or its Affiliates; Borrower and its Affiliates shall rely entirely upon their own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Administrative Agent or any Lender in connection with such matters is solely for the protection of Administrative Agent and Lenders and neither Borrower nor any other Person is entitled to rely thereon; and

(d) Neither Administrative Agent nor any Lender shall be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to property caused by the actions, inaction or negligence of Borrower and/or its Affiliates and Borrower hereby indemnifies and holds Administrative Agent and Lenders harmless from any such loss, damage, liability or claim.

10.15 NO THIRD PARTIES BENEFITED. This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Borrower, Administrative Agent and Lenders in connection with the Extensions of Credit, and is made for the sole benefit of Borrower, Administrative Agent and Lenders, and Administrative Agent's and Lenders' successors and assigns. Except as provided in Sections 10.04 and 10.13, no other Person shall have any rights of any nature hereunder or by reason hereof.

10.16 SEVERABILITY. Any provision of the Loan Documents that 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 thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.17 CONFIDENTIALITY. Administrative Agent, each Lender and each participant shall use any confidential non-public information concerning the Borrower Parties and their Subsidiaries that is furnished to Administrative Agent or such Lender by or on behalf of the Borrower Parties and their Subsidiaries in connection with the Loan Documents (collectively, "Confidential Information") solely for the purpose of evaluating and providing products and services to them and administering and enforcing the Loan Documents, and it will hold the Confidential Information in confidence. Notwithstanding the foregoing, Administrative Agent and each Lender may disclose Confidential Information (a) to their affiliates or any of their or their affiliates' directors, officers, employees, auditors, counsel, advisors, or representatives (collectively, the "Representatives") whom it determines need to know such information for the purposes set forth in this Section; (b) to any bank or financial institution or other entity to which such Lender has assigned or desires to assign an interest or participation in the Loan Documents or the Obligations, provided that any such foregoing recipient of such Confidential Information agrees to keep such Confidential Information confidential as specified herein; (c) to any governmental agency or regulatory body having or claiming to have authority to regulate or oversee any aspect of Administrative Agent's or such Lender's business or that of their Representatives in connection with the exercise of such authority or claimed authority; (d) to the extent necessary or appropriate to effect or preserve Administrative Agent's or such Lender's or any of their Affiliates' security (if any) for any obligation or to enforce any right or remedy or in connection with any claims asserted by or against Administrative Agent or such Lender or any of their Representatives; and (e) pursuant to any subpoena or any similar legal process. For purposes hereof, the term "Confidential Information" shall not include information that (x) is in Administrative Agent's or a Lender's possession prior to its being provided by or on behalf of the Borrower Parties, provided that such information is not known by Administrative Agent or such Lender to be subject to another confidentiality agreement with, or other legal or contractual obligation of confidentiality to, a Borrower Party, (y) is or becomes publicly available (other than through a breach hereof by Administrative Agent or such Lender), or (z) becomes available to Administrative Agent or such Lender on a nonconfidential basis, provided that the source of such information was not known by Administrative Agent or such

Lender to be bound by a confidentiality agreement or other legal or contractual obligation of confidentiality with respect to such information.

10.18 FURTHER ASSURANCES. Each Borrower Party shall, and shall cause its Subsidiaries to, at their expense and without expense to Lenders or Administrative Agent, do, execute and deliver such further acts and documents as any Lender or Administrative Agent from time to time reasonably requires for the assuring and confirming unto Lenders or Administrative Agent of the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document.

10.19 HEADINGS. Section headings in this Agreement and the other Loan Documents are included for convenience of reference only and are not part of this Agreement or the other Loan Documents for any other purpose.

10.20 TIME OF THE ESSENCE. Time is of the essence of the Loan Documents.

10.21 FOREIGN LENDERS. Each Lender that is a "foreign corporation, partnership or trust" within the meaning of the Code shall deliver to Administrative Agent, prior to receipt of any payment subject to withholding under the Code (or after accepting an assignment of an interest herein), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Person and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Person by Borrower pursuant to this Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Person by Borrower pursuant to this Agreement) or such other evidence satisfactory to Borrower and Administrative Agent that such Person is entitled to an exemption from, or reduction of, U.S. withholding tax. Thereafter and from time to time, each such Person shall (a) promptly submit to Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Person by Borrower pursuant to this Agreement, (b) promptly notify Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (c) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Person. If such Person fails to deliver the above forms or other documentation, then Administrative Agent may withhold from any interest payment to such Person an amount equivalent to the applicable withholding tax imposed by Sections 1441 and 1442 of the Code, without reduction. If any Governmental Authority asserts that Administrative Agent did not properly withhold any tax or other amount from payments made in respect of such Person, such Person shall indemnify Administrative Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to Administrative

Agent under this Section, and costs and expenses (including Attorney Costs) of Administrative Agent. The obligation of Lenders under this Section shall survive the payment of all Obligations and the resignation or replacement of Administrative Agent.

#### 10.22 REMOVAL AND REPLACEMENT OF LENDERS.

(a) Under any circumstances set forth in this Agreement providing that Borrower shall have the right to remove or replace a Lender as a party to this Agreement, Borrower may, upon notice to such Lender and Administrative Agent, remove such Lender by (i) non ratably terminating such Lender's Commitment (and thereby reducing the aggregate Commitments) and/or (ii) causing such Lender to assign its Commitment to one or more other Lenders or Eligible Assignees procured by Borrower pursuant to Section 10.04(b). Borrower shall (x) pay in full all principal, interest and fees owing to such Lender through the date of termination or assignment (including any amounts payable pursuant to Section 3.05), (y) provide appropriate assurances and indemnities (which may include letters of credit) to such Lender as it may reasonably require with respect to its participation interest in any Letters of Credit or any Swing Line Loans then outstanding and (z) release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver an Assignment and Acceptance covering such Lender's Commitment. Administrative Agent shall distribute an amended Schedule 2.01, which shall thereafter be incorporated into this Agreement, to reflect adjustments to Lenders and their Commitments. Borrower may net any payments required hereunder against any funds being provided in the same currency by any Lender or Eligible Assignee replacing a terminating Lender. The effect for purposes of this Agreement shall be the same as if separate transfers of funds had been made with respect thereto.

(b) In order to make all Lender's interests in any outstanding Extensions of Credit ratable in accordance with any revised Pro Rata Shares after giving effect to the removal or replacement of a Lender, Borrower shall pay or prepay, if necessary, on the effective date thereof, all outstanding Extensions of Credit of all Lenders, together with any amounts due under Section 3.05. Borrower may then request Extensions of Credit from Lenders in accordance with their revised Pro Rata Shares.

(c) This section shall supercede any provisions in Section 10.01 to the contrary.

#### 10.23 GOVERNING LAW.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF MISSOURI APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; PROVIDED THAT ADMINISTRATIVE AGENT AND EACH LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF MISSOURI OR OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH BORROWER PARTY, ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-

EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH BORROWER PARTY, ADMINISTRATIVE Agent AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH BORROWER PARTY, ADMINISTRATIVE Agent AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

10.24 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

#### 10.25 JUDGMENT.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, 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 currency on the Business Day preceding that on which final judgment is given. The obligation of Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents 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 the Administrative Agent or such Lender of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or such Lender in the Agreement Currency, Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or such Lender in such currency, the Administrative Agent or such Lender agrees to return the amount of any excess to Borrower (or to any other Person who may be entitled thereto under applicable law).

10.26 ENTIRE AGREEMENT. (a) This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among Borrower, Lenders and Administrative Agent, and supersedes all prior or



contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

(b) The following is added pursuant to Section 432.045 of the Missouri Revised Statutes; as used below "you" shall refer to Borrower and Guarantors, "us" shall refer to the Administrative Agent and Lenders and "this writing" shall refer to the Loan Documents:

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU AND US FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

#### 10.27 COLLATERAL PROTECTION COVERAGE.

The following is added pursuant to Section 427.120 of the Missouri Revised Statutes; as used below "you" and "your" shall refer to Borrower and Guarantors, "us", "we" and "our" shall refer to the Administrative Agent and Lenders and "agreement" shall refer to the Loan Documents:

Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

[SIGNATURE PAGES FOLLOW]

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

ESCO ELECTRONICS CORPORATION, as Borrower

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

BANK OF AMERICA, N.A., as  
Administrative Agent

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

BANK OF AMERICA, N.A., as a Lender,  
Issuing Lender and Swing Line Lender

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

BANK ONE, NA, as a Lender

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

THE NORTHERN TRUST COMPANY, as a Lender

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

LASALLE BANK NATIONAL ASSOCIATION, as a Lender

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

COMMERCE BANK, N.A., as a Lender

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

## SCHEDULE 1.01

## EXISTING LETTERS OF CREDIT

| SUBSIDIARY | DATE OF<br>ISSUING BANK | L/C#    | AMOUNT       | EXPIRY | BENEFICIARY        |
|------------|-------------------------|---------|--------------|--------|--------------------|
| ESCO       | BANK OF<br>AMERICA      | 3024820 | 4,000,000.00 | 4/7/01 | BANK OF<br>AMERICA |
|            | TOTAL                   |         | 4,000,000.00 |        |                    |

## SCHEDULE 2.01

## COMMITMENTS AND PRO RATE SHARES

| LENDER                            | COMMITMENT(\$) | PRO RATE SHARE (%) |
|-----------------------------------|----------------|--------------------|
| Bank of America, N.A.             | 20,000,000.00  | 26.67%             |
| Bank One, N.A.                    | 15,000,000.00  | 20.00%             |
| LaSalle Bank National Association | 15,000,000.00  | 20.00%             |
| The Northern Trust Company        | 15,000,000.00  | 20.00%             |
| Commerce Bank, N.A.               | 10,000,000.00  | 13.33%             |
| TOTAL                             | 75,000,000.00  | 100.00%            |

## CAPITALIZATION/SUBSIDIARIES

(a) The following is a list of Borrower's Subsidiaries

| Domestic<br>Subsidiaries<br>of Borrower | Outstanding<br>Shares | Held By                                 | % of Ownership |
|-----------------------------------------|-----------------------|-----------------------------------------|----------------|
| Defense Holding Corporation             | 1,000                 | ESCO Electronics Corp.                  | 100%           |
| PTI Technologies Inc.                   | 10,000                | Defense Holding Corp.                   | 100%           |
| PTI Advanced Filtration Inc.            | 100                   | Defense Holding Corp.                   | 100%           |
| Filtertek Inc.                          | 100                   | Defense Holding Corp.                   | 100%           |
| Filtertek de Puerto Rico, Inc.          | 100                   | Filtertek Inc.                          | 100%           |
| VACCO Industries                        | 100                   | Defense Holding Corp                    | 100%           |
| EMC Test Systems, L.P.                  | N/A                   | Rantec Holdings, Inc.                   | 99%            |
|                                         | N/A                   | Rantec Commercial, Inc.                 | 1%             |
| Distribution Control Systmes, Inc.      | 1,000                 | Defense Holding Corp.                   | 100%           |
| Rantec Microwave & Electronics, Inc.    | 1,000                 | Rantec Holdings, Inc.                   | 100%           |
| Rantec Holdings, Inc.                   | 1,000                 | Defense Holding Corp.                   | 100%           |
| Rantec Commercial, Inc.                 | 1,000                 | Rantec Microwave &<br>Electronics, Inc. | 100%           |
| Comtrak Technologies, LLC               | N/A                   | Defense Holding Corp                    |                |
| Comtrak International<br>Services, Inc. | 100                   | Comtrak Technologies, LLC               | 100%           |
| Hazeltine Europe, Inc.                  | 1,000                 | Defense Holding Corp                    | 100%           |
| The Curran Company                      | 2,312*                | Defense Holding Corp                    | 100%           |
| Lindgren, Inc.                          | 1,756.46*             | Defense Holding Corp                    | 100%           |

## NON-DOMESTIC SUBSIDIARIES OF BORROWER

|                                              |           |                                         |      |
|----------------------------------------------|-----------|-----------------------------------------|------|
| Filtertek SA (France)                        | N/A       | Filtertek Inc.                          | 99%  |
| Filtertek do Brazil                          | N/A       | Filtertek Inc.                          | 85%  |
| Filtertek BV                                 | 1,000     | Filtertek Inc.                          | 100% |
| Filtertek GmbH                               | N/A       | Filtertek Inc.                          | 100% |
| Filtrotec, Inc.(Puerto Rico)                 | N/A       | Filtertek Inc.                          | 100% |
| Filtertek De Puerto Rico                     | N/A       | Filtertek Inc.                          | 100% |
| Rantec Europe Microwave<br>Electronics S.A.  | N/A       | Rantec Microwave &<br>Electronics, Inc. | 100% |
| Distribution Control<br>Systems Caribe, Inc. | 1,000     | Distribution Control<br>Systems, Inc.   | 100% |
| PTI Technologies Limited                     | 1,000,000 | Defense Holding Corp                    | 100% |
| Process Plant Design, Ltd.                   | N/A       | PTI Technologies Limited                | 100% |
| ESCO Electronics De Mexico<br>S.A. de C.V.   | N/A       | Defense Holding Corp                    | 100% |
| ESCOCAN Electronics, Inc.                    | 1,000     | Defense Holding Corp                    | 100% |
| ESCO Fin Holding Oy                          | 1,000     | Defense Holding Corp                    | 100% |
| Euroshield Oy                                | 100       | ESCO Fin Holding Oy                     | 100% |
| Ray Proof                                    | N/A       | Lindgren, Inc.                          | 100% |
| Hazeltine Limited                            | N/A       | Hazeltine Europe, Inc.                  | 100% |

(b) The following is a list of any equity investments in any other corporation or entity held by Borrower:

- (1) 49% interest in a joint venture with Sanmar Engineering Corporation located in Madras, India \$233,258 on ESCO Consolidated Balance Sheet as of 02-29-00
- (2) \$495,000 investment in CASSPER product line with CSSI Inc. (EMC Test & Measurement Equipment)

## GOVERNMENT CONTRACTS

The following is a list of each Government Contract and Government Subcontract which has a remaining contract value in excess of \$1,000,000 and any amendments thereto, to which Borrower or any of its Subsidiaries is a party.

| Contract Type | Amount \$ | Customer      | Contract/<br>Purchase<br>Order # | Subsidiary |
|---------------|-----------|---------------|----------------------------------|------------|
| Subcontract   | 1,139,302 | Boeing        | M9H7XXB-863625E                  | Vacco      |
| Subcontract   | 1,165,331 | Electric Boat | PPK005-070                       | Vacco      |
| Subcontract   | 2,072,219 | Electric Boat | PPL011-064                       | Vacco      |

The following is the name and address of any surety with respect to any such Government Contract or Subcontract to which Borrower or any of its Subsidiaries is a party.

None



## EXISTING INDEBTEDNESS AND LIENS

(i) The following is a list of Indebtedness outstanding on the date hereof.

## Letters of Credit

| Subsidiary | Issuing Bank     | L/C#      | Amount       |
|------------|------------------|-----------|--------------|
| PTI        | Bank of New York | S00037794 | 179,995.00   |
| ESCO       | Bank of America  | 3024820   | 4,000,000.00 |
| PTI        | Bank of New York | S00040612 | 168,750.00   |
| EMC        | Bank of New York | S00040587 | 1,362.50     |
| EMC        | Bank of New York | S00040807 | 150,000.00   |
| ESCO       | Morgan           | S-866710  | 400,000.00   |
| ESCO       | Morgan           | S-866664  | 282,000.00   |
|            | TOTAL            |           | 5,182,107.50 |

(ii) The following is a list of liens outstanding on the date hereof

See attachment A hereto

## EXISTING INVESTMENTS

The following is a list of Investments existing on the date hereof:

- (1) 49% interest in a joint venture with Sanmar Engineering Corporation located in Madras, India \$233,258 on ESCO Consolidated Balance Sheet as of 02-29-00
- (2) \$495,000 investment in CASSPER product line with CSSI Inc. (EMC Test & Measurement Equipment)

5  
1,000

|         |             |         |
|---------|-------------|---------|
| 9-MOS   |             |         |
|         | SEP-30-2000 |         |
|         | JUN-30-2000 | 10,510  |
|         |             | 0       |
|         |             | 56,090  |
|         |             | 966     |
|         |             | 49,709  |
|         | 124,887     | 109,564 |
|         |             | 40,389  |
|         |             | 346,969 |
|         | 79,542      | 0       |
|         | 0           | 0       |
|         |             | 0       |
|         |             | 132     |
|         |             | 256,183 |
| 346,969 |             | 215,162 |
|         | 215,162     | 149,259 |
|         |             | 194,447 |
|         |             | 2,674   |
|         |             | 0       |
|         | (99)        |         |
|         | 18,140      |         |
|         |             | 5,860   |
| 12,280  |             | 0       |
|         |             | 0       |
|         |             | 0       |
|         |             | 12,280  |
|         |             | 1.00    |
|         |             | .97     |

This number does not include \$4.6 million of costs and estimated earnings on long-term contracts.