

OSHKOSH CORP

FORM 8-K

(Current report filing)

Filed 08/06/01 for the Period Ending 07/25/01

Address	2307 OREGON ST P O BOX 2566 OSHKOSH, WI 54903
Telephone	920 235 9151
CIK	0000775158
Symbol	OSK
SIC Code	3711 - Motor Vehicles and Passenger Car Bodies
Industry	Auto & Truck Manufacturers
Sector	Consumer Cyclical
Fiscal Year	09/30

OSHKOSH TRUCK CORP

FORM 8-K

(Unscheduled Material Events)

Filed 8/6/2001 For Period Ending 7/25/2001

Address	2307 OREGON ST P O BOX 2566 OSHKOSH, Wisconsin 54903
Telephone	414-235-9151
CIK	0000775158
Industry	Auto & Truck Manufacturers
Sector	Consumer Cyclical
Fiscal Year	09/30

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report
(Date of earliest
event reported): July 25, 2001

Oshkosh Truck Corporation

(Exact name of registrant as specified in its charter)

Wisconsin

(State or other
jurisdiction of
incorporation)

1-13886

(Commission File
Number)

39-0520270

(IRS Employer
Identification No.)

P.O. Box 2566, Oshkosh, Wisconsin 54903
(Address of principal executive offices, including zip code)

(920) 235-9151
(Registrant's telephone number)

Item 2. Acquisition or Disposition of Assets.

On July 25, 2001, Oshkosh Truck Corporation (the "Company") acquired from Powell Duffryn Limited ("Powell Duffryn") all of the outstanding capital stock of Geesink Group BV, Norba AB and Geesink Norba Limited (collectively, the "Geesink Norba Group") pursuant to a Sale and Purchase Agreement, dated June 28, 2001, among the Company, Powell Duffryn and the other parties named therein (the "Acquisition"). The total purchase price for the Acquisition was (E)155.6 million, including interest from March 31, 2001 to closing and cash acquired of (E)3.1 million, and net of assumed debt of (E)0.4 million (approximately U.S. \$136.9 million based upon the exchange rate of U.S. \$.88 to (E)1.00 as of July 25, 2001). The purchase price was determined on the basis of arm's length negotiations between the parties. There is no material relationship between Powell Duffryn and the Company or any of its affiliates, directors or officers or any of their associates.

The Geesink Norba Group is a leading European manufacturer of refuse collection truck bodies, mobile and stationary compactors and transfer stations under the Geesink(R) and Norba(R) brands. The Company intends to operate the business of Geesink Norba Group in substantially the same manner as it has been conducted prior to the Acquisition.

The Company entered into a Second Amended and Restated Credit Agreement, dated July 23, 2001, with Bank of America, N.A., Bank One, NA, Firstar Bank, N.A. and the other financial institutions party thereto, which added a \$140.0 million Term Loan B to the Company's senior credit facility to finance the Acquisition.

Item 7. Financial Statements and Exhibits.

(a) Not applicable.

(b) Not applicable.

(c) Exhibits.

The exhibits listed in the accompanying Exhibit Index are filed as part of this current Report on Form 8-K.

SIGNATURES

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

OSHKOSH TRUCK CORPORATION

Date: August 6, 2001

By: /s/ Charles L. Szews

Charles L. Szews
Executive Vice President and
Chief Financial Officer

OSHKOSH TRUCK CORPORATION

Exhibit Index to Current Report on Form 8-K Dated July 25, 2001

Exhibit
Number

(2.1) Sale and Purchase Agreement, dated June 28, 2001, among Powell Duffryn Holdings BV, Powell Duffryn (International) Limited and Powell Duffryn Investments Limited as Sellers, Oshkosh Group BV and Oshkosh European Holdings SL as Purchasers, Powell Duffryn Limited as Sellers' Guarantor and Oshkosh Truck Corporation as Purchasers' Guarantor.

(4.1) Second Amended and Restated Credit Agreement, dated July 23, 2001, among Oshkosh Truck Corporation, Bank of America, N.A., as Agent and Swing Line Lender, Bank One, NA, as Syndication Agent, Firststar Bank, N.A., as Documentation Agent, and the other financial institutions party thereto.

EXECUTION COPY

DATED 28 JUNE 2001

(1) POWELL DUFFRYN HOLDINGS BV, POWELL DUFFRYN (INTERNATIONAL) LIMITED and POWELL DUFFRYN INVESTMENTS LIMITED as Sellers
(2) OSHKOSH GROUP BV and OSHKOSH EUROPEAN HOLDINGS SL as Purchasers
(3) POWELL DUFFRYN LIMITED
as Sellers' Guarantor
(4) OSHKOSH TRUCK CORPORATION
as Purchasers' Guarantor

SALE AND PURCHASE AGREEMENT

for all the issued share
capitals of Geesink Group BV, Norba AB and Geesink Norba Limited

ROWE & MAW
20 Black Friars Lane
London EC4V 6HD

Tel: 020-7248 4282
Fax: 020-7248 2009
Ref: 456/422/27461.3

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Dutch Notarial Deed
Sellers' Deed Of Covenant
Purchasers' Funding Termsheet Tax Deed
Mr Harris' Deed Of Covenant
Purchasers' Banking Schedule

SALE AND PURCHASE AGREEMENT

DATE: 28th JUNE 2001

PARTIES:

(1) POWELL DUFFRYN HOLDINGS BV a company incorporated in the Netherlands (registered number 39031622) whose registered office is at Betonweg 8, 8305 AG Emmeloord, The Netherlands, POWELL DUFFRYN (INTERNATIONAL) LIMITED a company incorporated in England and Wales (registered number 1235617) whose registered office is at Powell Duffryn House, London Road, Bracknell, Berkshire RG12 2AQ and POWELL DUFFRYN INVESTMENTS LIMITED a company incorporated in England and Wales (registered number 739935) whose registered office is at Powell Duffryn House, London Road, Bracknell, Berkshire RG12 2AQ (each a "Seller" and together the "Sellers");

(2) OSHKOSH GROUP BV a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid) incorporated under the laws of the Netherlands with its seat in Amsterdam and its business office at De Lairessestraat 133, 1075 HJ, Amsterdam, The Netherlands registered in the Commercial Register under number 34158044 ("Oshkosh Group") and OSHKOSH EUROPEAN HOLDINGS S.L. ("Oshkosh European Holdings") a company incorporated in Spain (registered number Commercial Registry of Madrid, Volume ("Tomo") 16,400, Book ("Libro") 0, Page ("Folio") 110, Section ("Seccion") 8a, Sheet ("Hoja") M-278804) whose registered office is at Juan Vara Teran 14, 38009 Santa Cruz de Tenerife, Spain (together the "Purchasers");

(3) POWELL DUFFRYN LIMITED a company incorporated in England and Wales (registered number 298073) whose registered office is at Powell Duffryn House, London Road, Bracknell, Berkshire RG12 2AQ (the "Sellers' Guarantor"); and

(4) OSHKOSH TRUCK CORPORATION a company incorporated in Wisconsin whose registered office is at 2307 Oregon Street, Post Office Box 2566, Oshkosh, Wisconsin 54902 United States of America (the "Purchasers' Guarantor").

BACKGROUND:

(A) Geesink Group BV is a company limited by shares incorporated in the Netherlands on 13 December 1969 with registered number 17011545; Norba AB is a company

limited by shares incorporated in Sweden on 4 May 1914 with registered number 556012-0882; and Geesink Norba Limited is a private limited company incorporated in England and Wales on 28 October 1935 with registered number 306452. Further details of the Companies are set out in Schedule 1, Part 1 (Details of the Companies).

(B) The companies of which details are set out in Schedule 1, Part 2 (Details of the Subsidiaries) are subsidiaries of the Companies.

(C) The Sellers have agreed to sell all of the issued shares in the capitals of the Companies to the Purchasers for the consideration and upon the terms set out in this Agreement.

(D) The Sellers are subsidiaries of the Sellers' Guarantor and the Sellers' Guarantor has agreed, in consideration of the Purchasers entering into this Agreement and agreeing to be bound by its terms, to guarantee the performance by the Sellers of their obligations under this Agreement.

(E) The Purchasers are subsidiaries of the Purchasers' Guarantor and the Purchasers' Guarantor has agreed, in consideration of the Sellers' entering into this Agreement and agreeing to be bound by its terms, to guarantee the performance by the Purchasers of their obligations under this Agreement.

IT IS AGREED that:

1. Definitions and Interpretation

1.1 Defined terms

In this Agreement and the Background:

"Agreed Form Documents" means the Disclosure Letter, the Dutch Notarial Deed, the Tax Deed, the Sellers' Deed of Covenant, the Purchasers' Funding Term Sheet, Mr Harris' Deed of Covenant, the Letter of Resignation for Directors, the Purchasers' Banking Schedule and the Powers of Attorney in the Agreed Terms;

"Agreed Redundancy Programme" means the programme of redundancies in Norba Limited detailed in the Disclosure Letter;

"Agreed Terms" means, in relation to any document, that document in the terms agreed between the parties and signed or initialled for identification purposes only by or on behalf of each party prior to execution of this Agreement;

"Associate" has the meaning given in section 435 Insolvency Act 1986;

"Auditors" means Arthur Andersen of 1 Surrey Street, London WC2R 2PS;

"Balance Sheet Date" means 31 March 2001;

"Business Day" means a day (not being a Saturday or Sunday) when banks generally are open in the City of London, Amsterdam, Stockholm and the United States of America for the transaction of general banking business;

"Companies" means Geesink Group BV, Norba AB and Geesink Norba Limited, details of each of which are given in Schedule 1, Part 1 (Details of the Companies) and any reference to a "Company" is a reference to any one of them;

"Companies Act" means the Companies Act 1985;

"Company Intellectual Property" means all Intellectual Property which at the Completion Date is owned by any of the Companies or any of the Subsidiaries, and which is either used in or has been developed for use in or is required for or intended for use in the business of the Group as currently carried on, including that listed in Schedule 2 (Company Intellectual Property);

"Completion" means completion of the sale and purchase of the Shares under this Agreement;

"Completion Date" means close of business on the day Completion takes place;

"Completion Inter-Company Debt" means all monies owed by any member of the Group to any member of the Sellers' Group as at the Completion Date but for the avoidance of doubt not including any amounts to be paid by any members of the Group to any members of the Sellers' Group in respect of the settlement of corporate income tax;

"Completion Inter-Company Loans" means all monies owed by any member of the Sellers' Group to any member of the Group as at the Completion Date;

"Completion Net Debt" means the Debt of the Group as at the Completion Date less any cash, Completion Inter-Company Loans and an amount equal to the value of any marketable securities held by the Group as at the Completion Date (but excluding any monies received by the Group in settlement of any claims brought by the Group under

any insurance policies in which the Group has an interest between 31 March 2001 and the Completion Date);

"Completion Transaction Costs" means such sum as is equal to all and any Transaction Costs paid or payable by the Group as at Completion, determined in accordance with Clause 3.8;

"Confidential Information" means all information designated as confidential or which a recipient would reasonably consider to be confidential which is proprietary to any of the Companies or any of the Subsidiaries and includes all information used in or otherwise relating to the Group or its business, affairs, customers or the marketing of any goods or services including trade secrets, technical processes and technical information, customer names and lists and other details of customers, sales targets, sales statistics, market share statistics, market research surveys and reports, sales pricing, costs of sales, information relating to future business developments or planning, future projects, commercial relationships or legal advice, in each case, in whatever form held;

"Confidentiality Agreement" means the confidentiality agreement made on 25 January 2001 between Prestige Acquisitions Limited and the Purchasers' Guarantor;

"Consolidated Accounts" means the audited financial statements of the Group audited by the Auditors in the form of a statutory balance sheet as at the Balance Sheet Date, and a profit and loss account and a cashflow statement for the financial year ended on the Balance Sheet Date (in each case of the Group and incorporating appropriate eliminations) together in each case with all notes, reports and statements annexed thereto;

"Danish Warranties" means the additional warranties set out in Part 8 of Schedule 4 (Warranties);

"Debt" means third party loans, overdrafts, hire purchase or finance and other capital leasing arrangements, dividends payable or declared but not paid, Inter-Company Debt and including interest payable to a party which is not a member of the Group and other obligations of a similar nature whether short or long term (but excluding any such obligations to Powell Duffryn Holdings BV in respect of salary and other remuneration payments of an employee of a member of the Group or other properly incurred administrative expenses settled by such person which are customarily

recharged by a member of the Group (shown in the Consolidated Accounts at NLG 2.862 million));

"Directors" means the directors of each of the Companies and each of the Subsidiaries named in Schedule 1, Part 1 (Details of the Companies) and Schedule 1, Part 2 (Details of the Subsidiaries);

"Disclosed Environmental Matter" means any matter referred to in Annex 2 of the Disclosure Letter;

"Disclosure Letter" means the disclosure letter from the Sellers to the Purchasers, together with its annexures in the Agreed Terms having the same date as this Agreement;

"Dutch Warranties" means the additional Warranties set out in Part 2 of Schedule 4 (Warranties);

"Dutch Subsidiaries" means those of the Subsidiaries incorporated in the Netherlands in whose shares Geesink Group BV is directly or indirectly interested;

"Dutch Notarial Deed" means the notarial deed in the Agreed Terms effecting the transfer of the Shares in the capital of Geesink Group BV from Powell Duffryn Holdings BV to Oshkosh Group;

"Encumbrance" means any mortgage, charge, pledge, hypothecation, lien and security interests of whatsoever nature (including, without limitation, any imposed by law) and any proprietary interest or equity of any person including (without limitation) any title retention, option or right of pre-emption;

"Environment" means any of the following media namely air, controlled waters (as defined in section 104 of the Water Resources Act 1991) or analogous legislation outside the United Kingdom or land (including without limitation those media within buildings or other natural or man made structures above or below ground and tanks and underground drains);

"Environmental Laws" means any applicable statutes, statutory instruments, regulations, directives or orders which relate to the pollution or protection of the Environment and which are legally binding and in full force and effect at the date hereof;

"Environmental Permits" means all or any authorisations, certificates, permits, licences or consents required under any Environmental Laws for the operation of the Company;

"Environmental Warranties" means those Warranties at Paragraph 19 of

Part 1 of Schedule 4 (Warranties);

"Estimated Net Debt" has the meaning given to it in Clause 3.7 (Estimation of Completion Net Debt and Completion Transaction Costs);

"Estimated Transaction Costs" has the meaning given to it in Clause 3.7 (Estimation of Completion Net Debt and Completion Transaction Costs);

"Exclusivity Agreement" means an agreement made between the Purchaser's Guarantor and the Sellers' Guarantor dated 18 May 2001;

"Finance Manual" means the Powell Duffryn group finance manual in the form annexed to the Disclosure Letter;

"GAAP" means generally accepted accounting principles in force in the United Kingdom as promulgated by the Institute of Chartered Accountants of England and Wales, the Accounting Standards Board and the Urgent Issues Task Force at the date relevant thereto;

"Group" means the Companies and the Subsidiaries and "member of the Group" shall be construed accordingly;

"Group Guarantees" means those guarantees of the obligations of any member of the Sellers' Group entered into by the Companies and the Subsidiaries or any of them and now subsisting;

"Intellectual Property" means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, rights in know-how, Confidential Information and other proprietary information, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

"Inter-Company Debt" means all monies owed by any member of the Group to any member of the Sellers' Group but for the avoidance of doubt not including any amounts to be paid by any members of the Group to any members of the Sellers' Group in respect of the settlement of corporate income tax;

"Inter-Company Loans" means all monies owed by any member of the Sellers' Group to any member of the Group;

"Interest Rate" means, in relation to a day during any period during which interest accrues, the EURIBOR percentage rate calculated on an actual/360 day count basis as determined by the Banking Federation of the European Union for three month periods as displayed on the EURIBOR page of the Reuters screen at or about 11 a.m. London time on that day, save that for any day that is not a Business Day the relevant rate for that day will be that for the last preceding Business Day. If the agreed page is replaced or service ceased to be available, the Sellers' Guarantor may specify another page or service displaying the appropriate rate after consultation with the Purchasers;

"Irrecoverable Environmental Losses" means any and all Losses arising from any relocation of any part of the operation of the business which is carried out in connection with the carrying out of Remedial Action or other works or any loss of profit or Losses arising from any failure to comply with any contractual obligation;

"London Stock Exchange" means London Stock Exchange plc;

"Losses" in respect of any matter, event or circumstance includes all demands, claims, actions, proceedings, damages, payments, losses, costs, expenses or other liabilities;

"Management Accounts" means the April and May 2001 management accounts of the Group prepared by the Group;

"Mr Harris' Deed of Covenant" means the deed of that name in the Agreed Terms to be entered into between the Purchasers, the Purchasers' Guarantor and Mr Stephen Harris at Completion;

"NASD" means the National Association of Securities Dealers;

"Net Debt" means the Debt of the Group as at the Balance Sheet Date less any cash, Inter-Company Loans and an amount equal to the value of any marketable securities held by the Group as at the Balance Sheet Date, as set out in the Consolidated

Accounts. Example calculations of the Net Debt by reference to the Consolidated Accounts and the management accounts of the Group for March 2001 for illustrative purposes only are set out in Schedule 10 (Example Calculation of Net Debt);

"Norba AB Properties" means those Properties leased to Norba AB situated at Blomstermala, Sweden;

"Norba Acquisition Agreement" means the Share Purchase Agreement between (1) Partek Cargotec AB and (2) Powell Duffryn (International) Limited regarding all shares in Norba AB dated 21 August 2000;

"Norba Warranties" means the warranties and representations given by Partek Cargotec AB to Powell Duffryn (International) Limited pursuant to article 8 (excluding article 8.5) of the Norba Acquisition Agreement;

"Polish Warranties" means the additional Warranties set out in Part 9 of Schedule 4 (Warranties);

"Proceedings" means any proceedings, suit or action arising out of or in connection with this Agreement;

"Properties" means the freehold and leasehold properties described in Schedule 6 (Properties);

"Purchase Price" means the purchase price specified in Clause 3.1 (Purchase Price);

"Purchasers' Accountants" means Arthur Andersen LLP of Milwaukee, Wisconsin, USA;

"Purchasers' Banking Schedule" means the pro forma letter in the Agreed Terms setting out certain requested information to be provided by Powell Duffryn Limited to the Purchasers;

"Purchasers' Funding Termsheet" means the termsheet in the Agreed Terms setting out the terms upon which the Purchasers will seek third party financing to enable them to satisfy the Purchase Price;

"Purchasers' Group" means any of the following from time to time: the Purchasers' Guarantor, its subsidiaries (including, for the avoidance of doubt, the Purchasers) and subsidiary undertakings and any holding company or parent undertaking of the Purchasers' Guarantor and all other subsidiaries and subsidiary undertakings of any

holding company or parent undertaking of the Purchasers' Guarantor and "member of the Purchasers' Group" shall be construed accordingly;

"Purchasers' Solicitors" means Nicholson Graham & Jones of 110 Cannon Street, London EC4N 6AR;

"Reasonable and Prudent Operator" means a person exercising that degree of skill, diligence, prudence and foresight which would reasonably be expected from an experienced operator engaged in the same type of undertaking as the business of the Companies carried out at Completion and under the same or similar circumstances as at Completion;

"Recoverable Environmental Losses" means any and all Losses arising out of any of the following: claims by neighbouring owners/occupiers of land in respect of damage caused by off-site migration of pollution from any Property; removal, or the making safe or secure, of any pollution, including investigatory or other action necessary to assess the condition of the Properties or any other environmental media and undertaking works or carrying out any operations for the purpose of preventing, minimising, remedying or mitigating the effects of the pollution; the making of any subsequent inspections required from time to time for the purposes of reviewing the condition of the Properties or environmental media; the costs of obtaining any Environmental Permits necessary in order to undertake any of the above-mentioned actions, including the maintenance costs of any such Environmental Permit; reasonable legal and consultancy fees in connection with advice and assistance necessitated in consequence of the foregoing items; disposal costs of removing the pollution off site; and (to the extent legally permissible) environmental fines and penalties incurred by the Purchaser and/or any member of the Group and which are attributable to action or inaction of the Sellers PROVIDED THAT in each case any and all such Losses are the minimum reasonably necessary under Environmental Laws or Environmental Permits to remedy the particular breach of the Environmental Warranty in question and exclude Irrecoverable Environmental Losses;

"Securities Exchange Commission" means the Securities Exchange Commission of the United States of America;

"Sellers' Deed of Covenant" means the deed of that name in the Agreed Terms to be entered into between the Sellers, the Purchasers and the Sellers' Guarantor at Completion and where appropriate references to the Sellers' Deed of Covenant shall mean the deed of covenant as executed by the parties to it;

"Sellers' Group" means any of the following from time to time, except the Companies and the Subsidiaries: the Sellers' Guarantor, its subsidiaries and subsidiary undertakings and any holding company or parent undertaking of the Sellers' Guarantor and all other subsidiaries and subsidiary undertakings of any holding company or parent undertaking of the Sellers' Guarantor and "member of the Sellers' Group" shall be construed accordingly;

"Sellers' Guarantees" means those guarantees of the obligations of any member of the Group entered into by any member of the Sellers' Group and now subsisting (including but without limitation the several liability of Powell Duffryn Holdings BV for the debts of Geesink Group BV as a consequence of Powell Duffryn Holdings BV having filed a declaration with the trade register of the Chamber of Commerce in Lelystad, The Netherlands in accordance with paragraph 2.403-1 sub b of the Dutch Civil Code);

"Sellers' Dutch Solicitors" means Lovells of Frederiksplein 42, Postbus 545, 1000 AM, Amsterdam, the Netherlands;

"Sellers' Swedish Solicitors" means Mannheimer Swartling of PO Box 1711, 111 87 Stockholm, Sweden;

"Sellers' UK Solicitors" means Rowe & Maw of 20 Black Friars Lane, London, EC4V 6HD;

"Shares" means all the issued shares in the capitals of the Companies details of which are given in Schedule 1, Part 1 (Details of the Companies);

"Stock" means total stock and work in progress of the Group;

"Subsidiaries" means the companies details of which are given in Schedule 1, Part 2 (Details of the Subsidiaries) and any reference to a "Subsidiary" is a reference to any one of them;

"Swedish Warranties" means the additional Warranties set out in Part 3 of Schedule 4 (Warranties);

"Takeover Panel" means the Panel on Takeovers and Mergers of the United Kingdom;

"Tax" or "Taxation" means and includes all forms of taxation and impositions, duties, contributions, and levies in the nature of taxation;

"Tax Deed" means the deed of covenant relating to Tax in the Agreed Terms;

"Taxing Authority" means any Taxing or other authority, body or person (whether inside or outside the United Kingdom) competent to impose any liability to Tax;

"Termination Notice" has the meaning given to it in Clause 4.11 (Purchaser's Funding);

"Transaction Costs" means (pound)75,000, together with any costs relating specifically to the transaction contemplated by this Agreement in the nature of third party adviser's fees, special payments and/or bonuses to employees or other similar payments, and accommodation and travel costs of prospective purchasers of the Group, incurred in each case by a member of the Group prior to Completion (except to the extent payment of the same actually reduces the Purchase Price otherwise payable by virtue of its inclusion in the Completion Net Debt) but excluding those paid on or before 31 March 2001;

"UK Listing Authority" means the Financial Services Authority in its capacity as the competent authority for the purposes of the Financial Services Act 1986;

"Undisclosed Environmental Matter" means any matter the subject of a claim under the Environmental Warranties which is not a Disclosed Environmental Matter;

"VAT" means value added tax;

"VATA" means the Value Added Tax Act 1994;

"Warranties" means the warranties referred to in Clause 6 (Warranties) and set out in Schedule 4 (Warranties) and the warranties referred to in Clause 10.1 (Norba Warranties), given and made by the Sellers in favour of the Purchasers. The Warranties shall also include:

(i) in relation to Norba AB, the Swedish Warranties;

(ii) in relation to Geesink Group BV and the Dutch Subsidiaries, the Dutch Warranties;

(iii) in relation to Geesink Polska Sp.z o.o, the Polish Warranties;

(iv) in relation to Norba A/S, the Danish Warranties; and

(v) in relation to the branches of Geesink BV in Spain, Germany, France and Italy, those Warranties in Parts 4, 5, 6 and 7 respectively of Schedule 4 (Warranties); and

"Works Council" means the works council (gemeenschappelijke ondernemingsraad) of Geesink BV and Geesink Kiggen BV.

1.2 Contents page and headings

In this Agreement, the contents page and headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

1.3 Meaning of references

In this Agreement, unless the context requires otherwise, any reference to:

(a) this Agreement includes the Schedules, which form part of this Agreement for all purposes;

(b) the Background is to the statements about the background to this Agreement made above, a Clause or a Schedule is to a clause of or a schedule to this Agreement and to a Part or a Paragraph of a Schedule is to a part or a paragraph of that Schedule;

(c) a statute or statutory provision, except as expressly provided otherwise, includes any consolidation, re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment, modification or replacement and any subordinate legislation in force under any of the same from time to time except to the extent that any consolidation, re-enactment, modification or replacement enacted after the date of this Agreement would extend or increase the liability of any party to any other under this Agreement;

(d) a party or the parties is to a party or the parties (as the case may be) to this Agreement and shall include any permitted assignees of a party;

(e) the masculine, feminine or neuter gender respectively includes the other genders and any reference to the singular includes the plural (and vice versa);

- (f) a person includes any individual, firm, corporation, unincorporated association, government, state or agency of state, association, partnership or joint venture (whether or not having a separate legal personality);
- (g) a person includes a reference to that person's legal personal representatives and successors;
- (h) references to a company shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established;
- (i) a document is to that document as varied, supplemented or replaced from time to time, in each case in writing;
- (j) any English statutory provision or English legal term for any action, remedy, method of judicial proceeding, document, legal status, court, official or any other legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English statutory provision or English legal term;
- (k) writing shall include any modes of reproducing words in a legible and non-transitory form;
- (l) (E) or euros is to the lawful currency of the states in the European Union which are from time to time participating in economic and monetary union; and
- (m) a time of the day is to London time and references to a day are to a period of 24 hours running from midnight to midnight.

1.4 No restrictive interpretations

In this Agreement, general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

1.5 Companies Act definitions

In this Agreement, unless the context otherwise requires any word and expression defined in section 258 or Part XXVI of the Companies Act and not defined in this Agreement shall bear the meaning ascribed to it in that Act.

1.6 Several liability

Where one or more parties is expressed to have a right or an obligation under this Agreement, such right or obligation shall be several as between the parties expressed to have it save that:

- (a) the Sellers' Guarantor shall have joint and several liability for all obligations to which it is subject with others and it shall have sole liability under the guarantee set out in Clause 14.1 (Guarantee by Sellers' Guarantor); and
- (b) the Purchasers' Guarantor shall have joint and several liability for all obligations to which it is subject with others and it shall have sole liability under the guarantee set out in Clause 14.2 (Guarantee by Purchasers' Guarantor).

2. AGREEMENT TO SELL AND PURCHASE

2.1 Sale and purchase

Each of the Sellers shall sell with full title guarantee free from all Encumbrances, and each Purchaser shall purchase, the entire legal and beneficial ownership in the Shares set out against their respective names in Schedule 1, Part 3 (Shares to be Sold), together with all rights attached or accruing to them at Completion.

2.2 Waiver of pre-emption rights

The Sellers shall procure the waiver of all rights of pre-emption over or other rights to restrict transfer of the Shares conferred either by the articles of association or equivalent constitutional documentation of the Companies or in any other way.

3. PURCHASE PRICE

3.1 Purchase Price

The amount payable for the Shares (the "Purchase Price") shall be as follows:

- (a) (E)150 million; less
- (b) the greater of Net Debt or Completion Net Debt; less
- (c) Completion Transaction Costs.

3.2 Payment on Account

At Completion on account of the Purchase Price an amount equal to:

- (a) (E)150 million; less
- (b) the greater of Net Debt or Estimated Net Debt; less
- (c) the Estimated Transaction Costs,

together with an amount equal to the interest that would have accrued on such sum calculated on a daily basis at the rate of 2 per cent per annum above the Interest Rate and compounded quarterly for the period from 31 March 2001 up to and including the Completion Date or, if neither of the conditions in Clause 4.1 (Conditions) have been fulfilled on or before 13 July 2001, up to and including 31 July 2001 shall be paid to the Sellers' Guarantor as agent for the Sellers in cash on Completion by way of electronic bank transfers in accordance with Clause 4.8 (Completion Arrangements) and in the manner set out in Schedule 3 (Completion Arrangements). For the purposes of calculating such interest, the Interest Rate applicable for the second Business Day prior to Completion shall apply for the days from such Business Day to the Completion Date (if applicable). Such interest shall not be payable if Completion does not occur.

3.3 Receipt by Sellers' Solicitors

Receipt by the Sellers' UK Solicitors, the Sellers' Dutch Solicitors or the Sellers' Swedish Solicitors of any monies or completed documentation to be provided by the Purchasers in satisfaction of any of the obligations of the Purchasers under this Agreement shall be accepted by the Sellers as a full and complete discharge of that obligation and the Purchasers shall not be concerned to see the application of any payments made by it under this Agreement.

3.4 Payment pursuant to claim

If any payment is made by the Sellers (or any of them) to the Purchasers pursuant to a claim made by the Purchasers for any breach of this Agreement or otherwise pursuant to this Agreement the payment shall be made by way of reduction of the Purchase Price paid for the Shares and that portion of the Purchase Price paid in relation to the Company which is the subject matter of such claim shall accordingly be deemed to have been reduced by the amount of that payment.

3.5 Interest on overdue amounts

Interest shall be payable by the Purchasers on any money which is not paid by them to the Sellers or the Sellers' Guarantor under this Agreement by the due date for its payment. Interest shall be payable by the Sellers or the Sellers' Guarantor (as appropriate) or the Purchasers or the Purchasers' Guarantor (as appropriate) on any money which is not paid by the Sellers to the Purchasers or by the Sellers to the Purchasers (as the case may be) in accordance with Clause 3.8

(Notification of Completion Net Debt and Completion Transaction Costs)

or Clause 3.13 (Adjustment payments for Completion Inter-Company Loans and Completion Inter-Company Debts) or by the Sellers' Guarantor or to Norba Limited in accordance with Clause 13.1 (Norba Limited losses). Such interest shall accrue and be calculated on a daily basis, both before and after any judgement, at the rate of 4 per cent per annum above the Interest Rate for the period from the due date for its payment until the date on which it is actually paid. It shall be compounded quarterly and payable on demand.

3.6 Apportionment

The total price for the Shares under this Agreement shall be apportioned between the Companies as set out in Schedule 8 (Apportionment of Purchase Price) and as so apportioned shall be adopted by the parties for all purposes including Tax and stamp duty.

3.7 Estimation of Completion Net Debt and Completion Transaction Costs

No later than five Business Days prior to Completion, the Sellers shall acting reasonably and in good faith provide to the Purchasers their estimate of:

- (a) the Completion Net Debt (the "Estimated Net Debt");
- (b) the Completion Transaction Costs (the "Estimated Transaction Costs");
- (c) the Completion Inter-Company Debt (the "Estimated Inter-Company Debt"); and
- (d) the Completion Inter-Company Loans (the "Estimated Inter-Company Loans").

3.8 Notification of Completion Net Debt and Completion Transaction Costs

Within twenty (20) Business Days after the Completion Date, the Purchasers shall notify the Sellers of the amount of the Completion Net Debt and the Completion Transaction Costs, together with details of all components thereof (including but without limitation the Completion Inter-Company Loans and the Completion Inter-Company Debt). At such time, the calculation set out in Clause 3.2 shall be repeated replacing Estimated Net Debt with Completion Net Debt and Estimated Transaction Costs with Completion Transaction Costs. By reference to the final confirmation of Completion Net Debt and Completion Transaction Costs, the Sellers shall repay any amount overpaid by the Purchasers, or, as the case may be, the Purchasers shall make an additional payment of any underpayment by them on Completion, together with:

(a) the relevant interest overcharged, or, as the case may be undercharged on said sum from 31 March 2001 to Completion or 31 July 2001 (as the case may be) pursuant to Clause 3.2; and

(b) an amount representing interest at the rate applied in Clause

3.2 (from Completion to the date of further payment or repayment as the case may be) on the amount payable or repayable under this Clause. For the avoidance of doubt, this Clause 3.8(b) shall not apply in respect of any sums referred to in Clause 3.8(a).

Payment is to be made in either case within five (5) Business Days of the date of issue of the final confirmation of Completion Net Debt and Completion Transaction Costs. Any payments made in accordance with this Clause 3.8 shall be deemed to be an adjustment to the Purchase Price.

3.9 If Sellers disagree with Notification

The Sellers shall, within fifteen (15) Business Days of the notification being submitted to them in accordance with Clause 3.8 (Notification of Completion Net Debt and Completion Transaction Costs), notify the Purchasers in writing either that they approve of it or that they disagree with it, in which event they shall in such notification give details of the matters with which they disagree and the reasons for such disagreement. If the Sellers fail to issue such notice within fifteen (15) Business Days they shall be deemed to have approved the notification submitted by the Purchasers. In the event of disagreement the Sellers and the Purchasers shall use all reasonable endeavours forthwith to resolve the matter or matters in dispute. Any such

resolution which enables the Completion Net Debt, the Completion Transaction Costs, the Completion Inter-Company Loans and the Completion Inter-Company Debt to be agreed shall be expressed in a joint confirmation (the "Joint Resolution"), signed by the Purchasers and the Sellers, stating the Completion Net Debt, the Completion Transaction Costs, the Completion Inter-Company Loans and the Completion Inter-Company Debt. If no Joint Resolution shall be issued within thirty (30) Business Days of the notification having been submitted to the Sellers as aforesaid, the matter shall be referred to a firm of independent chartered accountants jointly agreed upon between the Purchasers and the Sellers or (failing such agreement) appointed, at the request of either the Purchasers or the Sellers at any time, by the President from time to time of the Institute of Chartered Accountants in England and Wales, which firm (the "Independent Accountants") shall then determine the matter in dispute and, shall confirm the Completion Net Debt, the Completion Transaction Costs, the Completion Inter-Company Loans and the Completion Inter-Company Debt. The Independent Accountants shall act as experts and not as arbitrators. Their decision shall be communicated in writing to the Purchasers and the Sellers and shall be final and binding upon the Purchaser and the Sellers, save in the event of manifest error.

3.10 Costs to be Borne jointly

The costs of the Independent Accountants shall be borne as to one half by the Sellers and as the other half by the Purchasers in connection with all matters specified in Clause 3.8 to 3.12 (inclusive).

3.11 Records etc. to be Made Available

The Purchasers shall use reasonable endeavours to procure that all records, working papers and other information within its possession or control as may be reasonably required by the Sellers and/or the Independent Accountants for the purpose of Clauses 3.8, 3.9 and 3.10, shall be made available as soon as practicable upon a request for them and shall generally render all reasonable assistance reasonably necessary in connection with the final confirmation of the Completion Net Debt and the Completion Transaction Costs.

3.12 Meaning of "final confirmation of Completion Net Debt and Completion Transaction Costs"

For the purposes of the Agreement "the final confirmation of Completion Net Debt and Completion Transaction Costs" shall mean:

- (a) the notification issued by the Purchasers pursuant to Clause 3.8 (if such notification is either approved or deemed to have been approved by the Sellers pursuant to Clause 3.9 in accordance with the time periods specified therein (If Sellers disagree with Notification)), in which case the final confirmation of Completion Net Debt and Completion Transaction Costs shall, for the purposes of the Agreement, be treated as issued five (5) Business Days after further notification has been given or is deemed to have been given that the Purchasers' notification is approved; or
- (b) the Joint Resolution (if a disagreement shall have been resolved as mentioned in Clause 3.9 (If Sellers disagree with Notification)) in which case the final confirmation of Completion Net Debt and Completion Transaction Costs shall, for the purposes of the Agreement, be treated as issued five Business Days after the date upon which the Joint Resolution has been given; or
- (c) the decision of the Independent Accountants (if any matter shall be referred to the Independent Accountants as mentioned in Clause 3.9 (If Sellers disagree with Notification)) in which case the final confirmation of Completion Net Debt and Completion Transaction Costs shall, for the purposes of the Agreement, be treated as issued five Business Days after the date upon which the decision shall have been given.

3.13 Adjustment payments for Completion Inter-Company Loans and Completion Inter-Company Debts

By reference to the final confirmation of Completion Net Debt and Completion Transaction Costs:

- (a) the Purchasers shall procure that any amount in respect of the Completion Inter-Company Loans overpaid by the relevant member of the Sellers' Group at Completion is repaid and that any additional payment of any underpayment at Completion in respect of the Completion Inter-Company Debt is made by the relevant member of the Group; and

(b) the Sellers shall procure that any amount in respect of the Completion Inter-Company Debt overpaid by the relevant member of the Group at Completion is repaid and that any additional payment(s) of any underpayment at Completion in respect of the Completion Inter-Company Loans is made by the relevant member of the Sellers' Group,

together with an amount representing interest at the rate applied in Clause 3.2 (from Completion to the date of further payment or repayment as the case may be) on the amount payable or repayable under this Clause. Payment is to be made in either case within five (5) Business Days of the date of issue of the final confirmation of Completion Net Debt and Completion Transaction Costs.

4. COMPLETION

4.1 Conditions

Completion is conditional on fulfilment of either of the following conditions:

- (a) the unconditional positive advice of the Works Council to the sale of Geesink Group BV in accordance with the provisions of this Agreement; or
- (b) the positive advice of the Works Council to the sale of Geesink Group BV in accordance with the provisions of this Agreement (subject to such further consultations with the Works Council as may be agreed by the parties) subject to conditions which are reasonably acceptable to the Sellers and the Purchasers.

For the purposes of this Clause 4.1(b), the Sellers shall not be entitled to object to the acceptance of a condition of such positive advice unless such condition directly or indirectly affects adversely to a material extent the interests of a member of the Sellers' Group and the Purchasers shall not be entitled to object to a condition of such positive advice unless such condition directly or indirectly affects adversely to a material extent the interests of a member of the Purchasers' Group (such interests including those of the Dutch Subsidiaries).

4.2 Notification of other parties

Upon either of the conditions in Clause 4.1 (Conditions) above being fulfilled, delayed in fulfilment or becoming incapable of fulfilment (but without prejudice to the provisions of Clause 4.3 (Consultation with Works Council)), the relevant party

shall immediately notify the other parties and shall supply to the others written evidence (if available) of the fulfilment of that condition or (as the case may be), an explanation for the delay or non-fulfilment.

4.3 Consultation with Works Council

(1) The Sellers and the Purchasers undertake to use all reasonable endeavours to obtain the positive advice of the Works Council to the sale of Geesink Group BV in accordance with the provisions of this Agreement as soon as reasonably practicable.

(2) If the positive advice of the Works Council is obtained subject to conditions the Sellers and the Purchasers shall consult with each other to seek to determine if and to what extent the conditions are reasonably acceptable to them, whether further consultation with the Works Council is necessary or desirable, and how they might address such conditions (or any of them).

4.4 If conditions not fulfilled

In the event that Completion does not take place on or before 31 July 2001, or such later date as the Sellers may advise the Purchasers or as the Purchasers may advise the Sellers (which in either case shall not be later than 31 August 2001), all rights and obligations of the parties under this Agreement (except under Clauses 12 (Announcements and Confidentiality), 15 (Costs) and 25 (Governing Law and Jurisdiction)) shall terminate and no party shall have any claim against any other, but without prejudice to the accrued rights and obligations of the parties in respect of any breaches of this Agreement before that termination.

4.5 Period before Completion

(1) The Sellers undertake that they shall procure that between the date of this Agreement and Completion:

(a) the Companies and the Subsidiaries shall not do anything outside the ordinary course of business which has a material adverse effect on the financial or trading position of the Group as a whole; and

(b) the Agreed Redundancy Programme shall be completed in accordance with its terms.

(2) In addition, the provisions of Schedule 9 (Conduct between exchange and Completion) shall apply as if set out in this Clause 4.5.

(3) The Sellers shall make arrangements with their insurers that, until the Completion Date, in relation to all material insurance policies in which the Group has an interest:

(a) such policies remain in force;

(b) the Purchasers' interest in the Group is noted; and

(c) there is endorsed upon the policy a notice stating that the relevant member of the Group is the loss payee thereunder.

If and to the extent any claim is made under such insurance policies in respect of the Group and relating to the period between the date of this Agreement and the Completion Date which gives rise to a payment to the Sellers under such policies, the Sellers shall, as soon as reasonably practicable following the later of Completion and receipt by the Sellers of any settlement monies, pay an amount equal to such monies to the Purchasers.

4.6 Compliance with Merger Code

The Sellers and the Purchasers undertake after the date of this Agreement to consult with relevant trade unions to the extent required pursuant to Chapter II of the Dutch Merger Code (SER Fusiegedragsregels 1975).

4.7 Completion

Completion shall take place:

(a) in respect of the sale of Geesink Norba Limited at the offices of the Sellers' Solicitors;

(b) in respect of the sale of Norba AB at the offices of Mannheimer Swartling at Normalmstorg 4, Box 1711, SE-111 87 Stockholm, Sweden; and

(c) in respect of the sale of Geesink Group BV at the offices of Lovells at Frederiksplein 42, Postbus 545, 1000 AM Amsterdam, The Netherlands

on the fifth Business Day following the date on which either of the conditions in Clause 4.1 (Conditions) has been fulfilled unless at such time the Purchasers have yet

to obtain the necessary funding to satisfy the Purchase Price, in which event Completion shall occur on the earlier of:

- (i) the second Business Day following the date on which the Purchasers obtain the necessary funding to satisfy the Purchase Price; and
- (ii) 31 July 2001 or such later date as the Sellers or the Purchasers (as appropriate) may have advised the Purchasers or the Sellers (as appropriate) in accordance with Clause 4.4 (If conditions not fulfilled), provided that at such date no Termination Notice has been issued by the Purchasers to the Sellers in accordance with Clause 4.11 (Purchasers' Funding).

The Purchasers undertake to the Sellers to notify the Sellers forthwith upon them having obtained the necessary funding to satisfy the Purchase Price.

4.8 Completion arrangements

At Completion the Sellers and the Purchasers shall do those things listed in Schedule 3 (Completion Arrangements). If the provisions of Schedule 3 (Completion Arrangements) are not complied with relating to the Sellers' obligations the Purchasers may:

- (a) defer Completion to a date not more than 28 days after the date specified in Clause 4.7 (Completion) as the date for Completion in which event the provisions of this Clause 4.8 shall apply to Completion as so deferred; or
- (b) proceed to Completion as far as practicable without prejudice to their rights under this Agreement or otherwise.

4.9 Repayment of Inter-Company Debt

The Purchasers shall procure that immediately following Completion the Estimated Inter-Company Debt is repaid in full.

4.10 Repayment of Inter-Company Loans

The Sellers shall procure that immediately following Completion the Estimated Inter-Company Loans are repaid in full.

4.11 Purchasers' Funding

If the Purchasers, having used their best endeavours, have been unable to obtain the necessary funding to satisfy the Purchase Price substantially (as defined below) on the terms of the Purchasers' Funding Termsheet on or before 31 July 2001 (or, if the Sellers have advised the Purchasers or the Purchasers have advised the Sellers (as appropriate) of a later date in accordance with Clause 4.4 (If Conditions not fulfilled), on or before the date so advised by the Sellers or the Purchasers (as appropriate)) the Purchasers shall, subject to demonstrating to the reasonable satisfaction of the Sellers that the Purchasers have used their best endeavours to obtain such funding, be entitled to elect by notice to the Sellers' Guarantor to terminate this Agreement (a "Termination Notice") (provided that in no circumstances shall the Purchasers be entitled to issue a Termination Notice other than on the later of 31 July 2001 and such date as the Sellers or the Purchasers (as appropriate) may have advised in accordance with Clause 4.4 (If conditions not fulfilled)). For the avoidance of doubt, unless the Sellers agree otherwise, the Purchasers shall be obliged to use their best endeavours aforesaid from the date hereof until the earlier of the date upon which the necessary funding to satisfy the Purchase Price has been obtained or a Termination Notice is issued, unless prior to such date, this Agreement has been terminated in accordance with Clause 4.4 (If conditions not fulfilled). In the event the Purchasers issue a Termination Notice, this Agreement shall terminate in accordance with the provisions of Clause 4.12 (Effect of Termination Notice) and Clause 4.13 (Payment to Sellers' Guarantor) shall apply. For the purposes of this Clause 4.11 "substantially" shall mean on terms:

- (a) as regards interest, not exceeding the interest rate specified in the Purchaser's Funding Termsheet by more than 50 (fifty) basis points; and
- (b) as regards repayment, no less favourable than the repayment schedule set out in the Purchasers' Funding Termsheet.

For the avoidance of doubt, the Purchasers' use of best endeavours shall not require them to make formal approaches to any bank other than Bank of America Securities LLC unless and until it reasonably believes that it will not obtain funding from it substantially in accordance with the Purchasers' Funding Termsheet.

4.12 Effect of Termination Notice

In the event the Purchasers issue a Termination Notice in accordance with Clause 4.11 (Purchasers' Funding) all rights and obligations of the parties under this Agreement (except under Clauses 4.13 (Payment to Sellers' Guarantor), 12 (Announcements and Confidentiality) (other than Clause 12.7), 15 (Costs) and 25 (Governing Law and Jurisdiction)) shall terminate and no party shall have a claim against any other in respect of any breaches of this Agreement before that termination.

4.13 Payment to Sellers' Guarantor

In the event that the Purchasers issue a Termination Notice in accordance with Clause 4.11 (Purchasers' Funding), the Purchasers shall (subject to Clause 4.14) forthwith pay to the Sellers' Guarantor the sum of (E)10,000,000 by electronic transfer for same day value.

4.14 Purchasers' Banking Schedule

- (1) On or before 29 June 2001 the Sellers' Guarantor shall provide to the Purchasers a draft of the Purchasers' Banking Schedule completed with the information required to be included therein, which information shall be drawn up as at 22 June 2001.
- (2) The Purchasers shall review the draft of the Purchaser's Banking Schedule provided by the Sellers' Guarantor pursuant to Clause 4.14(1) and shall provide their reasonable comments thereon to the Sellers' Guarantor in writing on or before 3 July 2001.
- (3) The Sellers' Guarantor shall consider any reasonable comments of the Purchasers on the draft Purchasers' Banking Schedule and deliver a revised version of the Purchaser's Banking Schedule taking reasonable account of such comments on or before 9 July 2001.
- (4) In the event that the Sellers' Guarantor does not provide the draft Purchasers' Banking Schedule to the Purchasers by the time specified in Clause 4.14(1), the time by which the Purchasers shall be required to provide their reasonable comments thereon pursuant to Clause 4.14(2) shall be extended by one day for each day by which the Sellers' Guarantor is late in providing such draft.
- (5) In the event that the Purchasers do not provide their reasonable comments on the draft of the Purchasers' Banking Schedule to the Sellers' Guarantor by the time specified in

Clause 4.14(2) (or as extended pursuant to Clause 4.14(4)), the Purchasers shall be deemed to have approved the draft in the form submitted to them.

- (6) Subject to Clause 4.14(7), on or before 20 July 2001 the Sellers' Guarantor shall provide to the Purchasers a further updated version of the Purchasers' Banking Schedule completed with the information required to be included therein, which information shall be drawn up as at 11 July 2001.
- (7) The Purchasers shall be entitled at any time prior to 20 July 2001 to give written notice to the Sellers' Guarantor, requesting that they delay the provision of the updated version of the Purchasers' Banking Schedule pursuant to Clause 4.14(6), in which event the Purchaser shall be entitled at any time prior to 23 July 2001 (or, if the Sellers have advised the Purchasers or the Purchasers have advised the Sellers (as appropriate) of a later date in accordance with Clause 4.4 (If Conditions not fulfilled), the seventh day prior to such later date) to give written notice to the Sellers' Guarantor requesting that an updated version of the Purchasers' Banking Schedule be provided within seven days of such notice, completed with the information required to be included therein drawn up as at the date prior to the date of receipt of such notice by the Sellers' Guarantor.
- (8) In the event that the Sellers' Guarantor does not deliver the revised Purchasers' Banking Schedule by the time specified in Clause 4.14(3) or the further updated Purchasers' Banking Schedule by the time specified in Clauses 4.14(6) or 4.14 (7) (as the case may be) and as a direct consequence thereof:
 - (a) the Purchasers are delayed in their ability to obtain funding in respect of the Purchase Price substantially on the terms of the Purchasers' Funding Termsheet (as defined in Clause 4.11) (having used their best endeavours so to do in accordance with Clause 4.11), then the interest otherwise payable by the Purchasers pursuant to Clauses 3.2 (Payment on Account) and 3.8 (Notification of Completion Net Debt and Completion Transaction Costs) shall not be payable in respect of each day by which the Sellers' Guarantor is late in providing the revised Purchasers' Banking Schedule or the further updated Purchasers' Banking Schedule (as appropriate); or
 - (b) the Purchasers are unable to obtain funding in respect of the Purchase Price substantially on the terms of the Purchasers' Funding Termsheet (as defined in Clause 4.11) (having used their best endeavours so to do in accordance with Clause 4.11), where the revised and/or updated Purchasers' Banking Schedule

is not provided by the Sellers' Guarantor within sixteen days after the time specified in Clauses 4.14(3) or 4.14(6) or 4.14(7) (as appropriate) respectively and the Purchasers issue a Termination Notice, the sum specified in Clause 4.13 (Payment to Sellers' Guarantor) shall not be payable.

- (9) If at any time prior to Completion, the Sellers' Guarantor becomes aware of any matter, fact or circumstance (save in respect of the indebtedness of the Group) which, were it to be reflected in a further updated Purchasers' Banking Schedule as at the date the Sellers' Guarantor becomes aware of such matter, fact or circumstance, would give rise to material variance from the information contained in the updated Purchasers Banking Schedule prepared in accordance with Clauses 4.14(3) or 4.14(6) or 4.14(7) (as the case may be) (which shall mean a variance equal to or greater than one million Euros), then the Sellers' Guarantor shall notify the Purchasers of such matter, fact or circumstance as soon as reasonably practicable after becoming aware of the same.
- (10) The Sellers' Guarantor shall prepare the Purchasers' Banking Schedule and any other information which it is obliged to provide pursuant to this Clause 4.14 in good faith. Subject thereto, neither the Sellers nor the Sellers' Guarantor shall be liable in equity, contract or tort or under the Misrepresentation Act 1967 or in any other way in respect of the contents of the Purchasers' Banking Schedule being false, inaccurate or incomplete (save in the case of fraud).

5. ANTI-TRUST NOTIFICATIONS

5.1 Filing responsibilities

The Purchasers shall be responsible for obtaining all such anti-trust or competition confirmations or consents as may be necessary. The Sellers shall join in and assist in such filings in so far only as the Sellers are required to do so by applicable laws. The Purchasers shall be responsible for all costs and legal expenses associated therewith and shall fully indemnify the Sellers accordingly and keep the Sellers fully indemnified.

5.2 Furnishing information

Each party shall furnish to the other such necessary information and provide such assistance as the other may reasonably request in connection with the preparation of any anti-trust or competition filing or submission which is necessary under any applicable legislation, rules or regulations. The parties shall keep each other fully

informed of the status of any communication with, and any enquiries or requests for additional information from any applicable anti-trust or competition authority and the Purchasers shall comply promptly with any such enquiries or requests.

5.3 Purchasers' endeavours

The Purchasers and, subject to Clause 5.1 (Filing responsibilities), the Sellers and the Sellers' Guarantor (to the extent that the Sellers and the Sellers' Guarantor may provide assistance) shall use all reasonable endeavours to obtain all anti-trust or competition confirmations or consents required under any applicable legislation, rules or regulations for the transaction contemplated in this Agreement.

6. WARRANTIES

6.1 Warranties

As at the date of this Agreement, the Sellers warrant to the Purchasers in terms of the Warranties.

6.2 Certain Warranties to be repeated at Completion

The Sellers warrant to the Purchasers in the terms of the Warranties set out in Paragraphs 2.2, 2.4, 3, 5(h), 6.1, 7.2, 7.3, 7.4, 8, 15.2, 16, 18.1, 18.2, 18.3, 18.4, 18.5, 18.11(b), 18.11(c) and 21 only of Part 1 of Schedule 4 (Warranties) as at Completion as if repeated by reference to the facts and circumstances then existing.

6.3 Sellers to disclose breaches prior to Completion

The Sellers shall as soon as reasonably practicable after becoming aware of the same disclose to the Purchasers in writing any matter, event or circumstance which shall be discovered to have occurred or to exist, or which shall happen or occur, between the date hereof and prior to Completion which will cause or constitute a breach of any of the Warranties set out in those Paragraphs of Schedule 4 (Warranties) listed in Clause 6.2 (Certain Warranties to be repeated at Completion) as at Completion by reference to facts and circumstances then existing and such disclosure shall not (for the avoidance of doubt) affect the liability of the Sellers for breach of any Warranty.

6.4 Limitations on claims

The liability of the Sellers under the Warranties or any other provision of this Agreement shall (except in the case of fraud) be limited as set out in Schedule 5 (Limitation on Claims).

6.5 Status of Warranties

Subject to Clause 6.6 (Certain Warranties specific), the Sellers agree that each of the Warranties is separate from and independent of any other Warranty and (except as otherwise provided in this Agreement) shall not be limited by any other provision of this Agreement.

6.6 Certain Warranties specific

(1) The only Warranties given:

- (a) in respect of the Environment are those set out in Paragraph 19 (Environment) of Part 1 of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to the Environment;
- (b) in respect of employment matters excluding pensions but including other benefits are those set out in Paragraph 15 (Employees) of Part 1, Paragraph 2 of Part 6, Paragraph 4 of Part 8 and Paragraph 4 of Part 9, of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to employment matters; and
- (c) in respect of the Properties are those set out in Paragraph 18 (Properties) of Part 1 of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to the Properties.
- (d) in respect of Intellectual Property are those set out in Paragraph 11 (Intellectual Property) of Part 1, Paragraphs 2 and 3 of Part 3, Paragraph 2 of Part 4, Paragraph 1 of Part 5, Paragraph 1 of Part 6, Paragraph 1 of Part 7, Paragraphs 2 and 3 of Part 8 and Paragraph 3 of Part 9, of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to Intellectual Property;

(e) in respect of pensions matters are those set out in Paragraph 16 (Pensions) of Part 1 of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to pensions matters;

(f) in respect of Taxation are those set out in Paragraph 17 (Taxation Matters) of Part 1, Paragraph 1 of Part 2, Paragraph 3 of Part 4, Paragraph 3 of Part 6, Paragraph 2 of Part 7, Paragraph 5 of Part 8 and Paragraph 5 of Part 9, of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to Taxation; and

(g) in respect of competition and anti-trust law matters are those set out in Paragraph 21 (Competition) of Part 1, Paragraph 4 of Part 6, Paragraph 3 of Part 7, Paragraph 6 of Part 8 and Paragraph 6 of Part 9, of Schedule 4 (Warranties) and the other Warranties shall be deemed not to be given in relation to competition and anti-trust law matters.

(2) Nothing contained in Clause 6.6 shall operate to qualify, limit or disapply the Warranties given in relation to the Consolidated Accounts and the Management Accounts, being those set out in Paragraph 4 of Part 1 of Schedule 4 (Warranties) from any matter to which they may relate.

6.7 No right of Purchasers to rescind

The sole remedy of the Purchasers for breach of the Warranties shall be damages and the Purchasers acknowledge that they shall have no right to rescind this Agreement in any circumstances and the Purchasers irrevocably waive any other remedies they may have in relation to a breach of the Warranties.

6.8 Meaning of "so far as the Sellers are aware"

If any of the Warranties are expressed to be given "so far as the Sellers are aware" or "to the best of the knowledge, information and belief of the Seller", or words to that effect the Sellers shall be deemed only to have knowledge of the facts, matters and circumstances:

(a) disclosed by Gijs Spruit, Wim Nieuwenhuijzen, Johan Biskop, Arnold Laarhoven, Dion Stuifmeel, Reino Winnsater and Per-Anders Scherlund, in response to the Sellers' due and careful enquiries of such persons in respect of the Warranties which the Sellers have made for these purposes; and/or

(b) of which Stephen Harris and Roger Lee have actual knowledge and:

(i) in the case of Paragraphs 10.7, 19.5, 19.6 and 21 only of Part 1 of Schedule 4 (Warranties), of which Gijs Spruit has actual knowledge; and

(ii) in the case of Paragraph 18 only of Part 1 of Schedule 4 (Warranties), of which John Clowes has actual knowledge; and

the Sellers shall be deemed not to have any other actual, imputed or constructive knowledge.

6.9 Basis of recovery for breach of certain Warranties

(1) Subject to Schedule 5, in the event of any breach of any of the Warranties set out in Paragraphs 17 (Taxation matters), 19 (Environment) and 12.11 (Norba Agreement) only of Part 1 of Schedule 4 (Warranties) the Sellers shall, on demand, pay to the Purchasers an amount equal to the aggregate of all Losses incurred by any member of the Group and/or any member of the Purchasers' Group directly in connection with or in consequence of or in respect of the circumstances giving rise to the breach of that Warranty.

(2) Subject to Schedule 5 (Limitations on Claims), in addition, in the event of any breach of the Warranties set out in Paragraph 21 (Competition) of Part 1 of Schedule 4 (Warranties), the Sellers shall, on demand, pay to the Purchasers an amount equal to the aggregate of:

(a) any fines and/or penalties imposed by any governmental or regulatory authority on any member of the Group and/or any member of the Purchasers' Group; or

(b) those Losses incurred by any member of the Group and/or any member of the Purchasers' Group as a result of claims, actions or proceedings brought against any member of the Purchasers' Group and/or any member of the Group by a third party customer of any member of the Group;

directly in connection with or in consequence of or in respect of the circumstances giving rise to the breach of that Warranty. For the avoidance of doubt, the Sellers' liability in respect of any breach of the Warranties set out in Paragraph 21 as aforesaid shall be limited to Purchaser's Group's rights of recovery under this Clause 6.9.

6.10 No claim against employees

The Sellers and the Sellers' Guarantor shall not, and shall procure that no member of the Sellers' Group shall make any claim or demand or exercise any other right or remedy which the Sellers or the Sellers' Guarantor may have against any of the employees of the Companies in connection with this transaction (including the provision of information contained or reflected in the Disclosure Letter), save in the case of fraud committed by the relevant employee or if and insofar as the Purchasers may in their absolute discretion otherwise agree in writing and any recovery made by any of the Sellers or the Sellers' Guarantor consequent on any breach of this Clause 6.10 shall (save in the case of fraud) be held on trust with the Purchasers.

6.11 Assignment of debts

In the event that the Purchasers bring any claim against the Sellers for breach of Paragraph 6.5 (Debts Collectable) of Part 1, Schedule 4 (Warranties), upon payment in full by the Sellers of the amount agreed by the Sellers and the Purchasers or adjudged by a court of competent jurisdiction to be payable in each case in satisfaction or settlement of such claim, at the election of the Sellers the Purchasers shall deliver a legal assignment of the debt or debts giving rise to such claim in such form as the Sellers may reasonably require in favour of Sellers' Guarantor or as the Sellers' Guarantor may direct.

6.12 The parties hereto hereby agree and acknowledge to each other that:

- (a) the Disclosed Environmental Matters have been disclosed to the Purchasers for the purposes of information only;
- (b) notwithstanding Clause 10, paragraph 3(f) of Schedule 5 and the provisions of the Disclosure Letter (but without prejudice to the other provisions of Schedule 5), disclosure of the Disclosed Environmental Matters shall not in any way whatsoever limit the ability of the Purchasers to claim under the Warranties in respect of the Disclosed Environmental Matters or limit or otherwise affect the amount of damages that the Purchasers may recover in respect of any such claims;
- (c) the Purchasers, in agreeing to the Purchase Price, did not take into account any Losses that may arise as a consequence of the Disclosed Environmental Matters being in excess of the amount set out in paragraph 3(c) of Schedule 5

and the Purchasers have agreed that in respect of a claim under the Environmental Warranties relating to the Disclosed Environmental Matters their rights of recovery in respect thereof shall be limited in accordance with paragraph 3(c) of Schedule 5.

7. PURCHASERS' AND PURCHASERS' GUARANTOR'S WARRANTIES AND UNDERTAKINGS

7.1 Purchasers' and Purchasers' Guarantor's warranties

Each of the Purchasers and the Purchasers' Guarantor warrants and represents to the Sellers and the Sellers' Guarantor that:

- (a) it has full power to enter into and perform this Agreement and the Deed of Covenant (as appropriate) and this Agreement and the Deed of Covenant (as appropriate) each constitute valid and binding obligations on the Purchasers and the Purchasers' Guarantor in accordance with their respective terms;
- (b) it is entering into this Agreement on its own behalf and not on behalf of any other person;
- (c) the execution and delivery of, and the performance by it of its obligations under, this Agreement and the Deed of Covenant (as appropriate) will not:
 - (i) result in a breach of any provision of its memorandum and articles of association or other statutes and bye-laws; or
 - (ii) result in a breach of any order, judgment or decree of any court or governmental agency to which the Purchasers or the Purchasers' Guarantor is a party or by which the Purchasers or the Purchasers' Guarantor is bound;
- (d) all consents, permissions, approvals and agreements of its shareholders or any other third parties which are necessary for the Purchasers and the Purchasers' Guarantor to obtain in order to enter into and perform this Agreement, the Tax Deed and the Deed of Covenant (as appropriate) in accordance with their respective terms (subject to the provision of funding in accordance with the terms of the Purchasers' Funding Term Sheet) have been unconditionally obtained in writing and have been disclosed in writing to the other parties to this Agreement;

(e) neither it nor its respective, directors, officers, employees, agents or advisors is aware of any facts or matters which would or may prevent the Purchasers from obtaining the necessary funding to satisfy the Purchase Price on or before Completion on the basis of the Purchasers' Funding Term Sheet.

7.2 Purchasers' undertakings

The Purchasers undertake to the Sellers that:

(a) the terms and conditions of employment and other benefits enjoyed by the employees of the Group (details of which are set out in the Disclosure Letter) in the period of 12 months after Completion will be no less favourable taken as a whole than those enjoyed by them prior to the Completion Date (but without prejudice to any improvement to salaries, wages or conditions agreed in accordance with the Purchasers' normal review procedures); and

(b) all applicable provisions of relevant collective bargaining agreements and agreements or arrangements with any trade union or works council relating to such employees shall be complied with in the period of 12 months after Completion, unless all the parties to such agreements or arrangements agree to alter the terms of such agreements or arrangements.

8. UK PENSIONS

The provisions of Schedule 7 (UK Pensions) shall take effect as if set out in this Clause 8 (UK Pensions).

9. Group and Sellers' Guarantees

9.1 Release of Sellers' Guarantees

Each of the Purchasers undertakes to the Sellers (for themselves and as trustee for any member of the Sellers' Group) that it and will procure that all members of the Purchasers' Group will use all reasonable endeavours to procure the release on or within 14 days after Completion of the Sellers or any member of the Sellers' Group from any obligations or liabilities they may have in respect of the Sellers' Guarantees and any other guarantee or indemnity given for the benefit of any member of the Group and pending that release shall indemnify and keep the Sellers or any member of the Sellers' Group indemnified against any liability arising under the Sellers' Guarantees and those other guarantees and indemnities.

9.2 Release of Group Guarantees

Each of the Sellers undertakes to the Purchasers (for themselves and as trustee for any member of the Purchasers' Group) that it will use all reasonable endeavours to procure the release on or within 14 days after Completion of any member of the Group from any obligations or liabilities they may have in respect of the Group Guarantees and any other guarantee or indemnity given for the benefit of any member of the Sellers' Group and pending that release shall indemnify and keep the Purchasers or any member of the Purchasers' Group indemnified against any liability arising under the Group Guarantees and those other guarantees and indemnities.

10. NORBA ACQUISITION AGREEMENT

10.1 Norba Warranties

Without prejudice to the rights of the Purchaser to make any claim in respect of such of the Warranties as are set out in Schedule 4 (subject only to any time or other limits set out in Schedule 5 (Limitations on Claims) and for the avoidance of doubt nothing in this Clause 10 shall operate to alter such time or other limits as are set out in Schedule 5), Powell Duffryn (International) Limited warrants to the Purchasers in the terms of the Norba Warranties such that the liability of Powell Duffryn (International) Limited to the Purchasers in relation thereto shall be deemed to be that which it would have been had such warranties been given by Powell Duffryn (International) Limited on the date of the execution of the Norba Acquisition Agreement, provided that:

- (a) the Purchasers shall only be entitled to bring a claim under this Clause 10.1 (Norba Warranties) for so long as Powell Duffryn (International) Limited shall be entitled to enforce recovery from Partek Cargotec AB in respect of breach of the relevant Norba Warranty;
- (b) in the event that any matter, event or circumstances constitutes a breach of this Clause 10.1 (Norba Warranties) and any other of the Warranties, the Purchasers shall bring any claim first and to the fullest extent possible pursuant to this Clause 10.1 (Norba Warranties) (and for the avoidance of doubt it shall be permissible, in relation to any claim, for the Purchasers to plead or rely upon a breach of the Warranties as a further and alternative cause of action);

- (c) the Purchasers shall render or cause to be rendered to Powell Duffryn (International) Limited all assistance as Powell Duffryn (International) Limited may reasonably require (including providing access to information and to employees (save where the Purchasers reasonably believe that there is a conflict of interest in any relevant employee providing such services as a consequence of the nature of the services to be provided by that employee conflicting with the subject matter of a notified claim for breach of any of the Warranties by the Sellers, save where such conflict arises solely as a result of the Purchasers having a claim against the Sellers under the Warranties), of the Purchasers or the relevant Company or Subsidiary or any other member of the Purchasers' Group) for the purpose of enabling Powell Duffryn (International) Limited to enforce recovery by Powell Duffryn (International) Limited from Partek Cargotec AB in respect of any breach of any of the Norba Warranties provided that the Purchasers shall be entitled to charge a reasonable fee for the time and services of such employees so provided;
- (d) without prejudice to Clause 10.1(e) below, whether any matter, event or circumstance constitutes a breach of this Clause 10.1 (Norba Warranties) and the amount recoverable for such breach shall each be determined in accordance with:
 - (i) the second sentence of article 10.2 of the Norba Acquisition Agreement; and
 - (ii) Swedish lawbut otherwise subject to Clauses 25.2 and 25.3 save that the Purchasers shall have the right to institute any proceedings in Sweden in relation to any such determination subject to the provisions of the Norba Acquisition Agreement; and
- (e) subject to Clauses 10.1(a) and (b) above, the provisions of Schedule 5 (Limitation on Claims) shall apply to the liability of Powell Duffryn (International) Limited pursuant to this Clause 10.1 (Norba Warranties).

10.2 Performance and enjoyment of Norba Acquisition Agreement

- (1) Without prejudice to any other rights of the Purchasers under this Agreement but subject to the provisions of Clause 10.1 (Norba Warranties), in relation to the

provisions of the Norba Acquisition Agreement (other than those relating to the Norba Warranties and the benefit of any sums payable by Partek Cargotec AB pursuant to articles 10.4.1, 10.4.2, 10.4.3, 13.3 and 14.4.5 of the Norba Acquisition Agreement):

- (a) each of the Sellers shall procure that Powell Duffryn (International) Limited shall hold the Norba Acquisition Agreement and any monies, goods or other benefits received under the Norba Acquisition Agreement (other than monies, goods or other benefits due prior to Completion or in respect of rights accruing or claims made prior to Completion) as trustee for the Purchasers and shall, as soon as reasonably practicable upon receipt of the same, account for and pay or deliver to the Purchasers all those monies, goods and other benefits;
 - (b) the Purchasers shall (if and to the extent sub-contracting or agency is permissible under the Norba Acquisition Agreement) as the Powell Duffryn (International) Limited's sub-contractor or agent perform on behalf of Powell Duffryn (International) Limited (but at the Purchasers' expense) all the obligations of Powell Duffryn (International) Limited arising after Completion; and
 - (c) the Purchasers shall indemnify the Sellers against or reimburse the Sellers for any payment required to be made or other liability incurred by it or any other member of the Sellers' Group in relation to the Norba Acquisition Agreement after the Completion Date except to the extent that the payment or liability shall arise wholly or partly as a result of the failure by Powell Duffryn (International) Limited duly to perform and comply with the terms of the Norba Acquisition Agreement prior to the Completion Date.
- (2) The Purchasers undertake that it shall, at the Purchasers' cost, carry out and complete for their own account the outstanding obligations and liabilities created by or arising under the provisions of the Norba Acquisition Agreement (other than those relating to the Norba Warranties) from Completion.
- (3) Neither this Agreement nor any action carried out in pursuance of it shall constitute an assignment or attempted assignment of the Norba Acquisition Agreement without the consent of Partek Cargotec AB if that assignment or attempted assignment would constitute a breach of the Norba Acquisition Agreement except to the extent that the consent is obtained.

- (4) To the extent that performance and discharge by the Purchasers of the obligations and liabilities arising under the provisions of the Norba Acquisition Agreement referred to in Clause 10.2(1) (whether as agent or subcontractor or otherwise) would constitute a breach of the express or implied terms of the Norba Acquisition Agreement the Sellers shall procure that Powell Duffryn (International) Limited shall continue to perform and discharge the relevant provisions of the Norba Acquisition Agreement to the extent necessary to avoid any such breach provided that:
- (a) the Sellers shall procure that Powell Duffryn (International) Limited shall exercise its rights in respect of the Norba Acquisition Agreement as the Purchasers may reasonably direct or approve and shall account to the Purchasers for any sums arising under it (other than sums due prior to Completion or in respect of rights accruing or claims made prior to Completion) and shall to the extent permitted under the terms of it be deemed to have granted the Purchasers a licence free of charge to exercise all rights of Powell Duffryn (International) Limited under it; and
 - (b) Powell Duffryn (International) Limited shall be deemed to hold the benefit of the Norba Acquisition Agreement (other than in respect of any monies, goods or other benefits due prior to Completion or in respect of rights accruing or claims made prior to Completion) on trust for the Purchasers (or as they may direct) and that benefit will be as soon as reasonably practicable be paid over to the Purchasers; and
 - (c) the Purchasers shall reimburse to the Sellers any costs and expenses incurred by them or any other member of the Sellers' Group after the Completion Date and shall on behalf of Powell Duffryn (International) Limited discharge any liabilities in each case arising as a result of that performance and discharge by Powell Duffryn (International) Limited and shall provide all facilities, assistance and information to the Sellers and any other member of the Sellers' Group free of charge for that purpose (including providing the services of any relevant employees (save where the Purchasers reasonably believe that there is a conflict of interest in any relevant employee providing such services as a consequence of the nature of the services to be provided by that employee conflicting with the subject matter of a notified claim for breach of any of the Warranties by the Sellers), and the use of any relevant assets of any member of the Purchasers' Group) and shall indemnify the Sellers against all Losses of any member of the Sellers' Group in connection with the same.

- 11. SPECIFIC INDEMNITIES
- 11.1 Zoller Infringement Claim
- (1) The Sellers undertake to the Purchasers to indemnify the Purchasers or any members of the Purchasers' Group and/or any member of the Group and keep them indemnified, against any liability arising out of the claims of patent infringement set out in the letter dated 7 July 1999 from Zoller-Kipper GmbH ("Zoller") to Geesink B.V. and the letter dated 18 April 2001 from Landwell (Zoller's lawyers) to De Brauw Blackstone Westbroek (Geesink B.V.'s lawyers) (collectively, the "Zoller Infringement Claim"), subject to the terms of this Clause 11.1.
- (2) The agreement to indemnify pursuant to this Clause 11.1 shall relate only to the following:
 - (a) reasonable legal costs incurred by any member of the Purchasers' Group and/or any member of the Group in defending and/or attempting to settle any proceedings brought against any of them by Zoller, to the extent that these relate to the Zoller Infringement Claim; and

(b) either but not both of:

(i) if a binding judicial decision is made against any member of the Purchasers' Group and/or any member of the Group in relation to the Zoller Infringement Claim:

(aa) any damages awarded under that decision, but only to the extent that these are referable to the period ending on 31 December 2001 (and in the absence of any apportionment of such damages, they shall be deemed to be apportioned so as to reflect the number of products sold in the respective periods covered by the decision before and after 31 December 2001 and which are found to be infringing); and

(bb) any costs awarded against any member of the Purchasers' Group and/or any member of the Group under that decision; or

(ii) sums paid to Zoller by any member of the Purchasers' Group and/or any member of the Group in final settlement of the Zoller Infringement Claim but

- (aa) up to an aggregate limit (including legal costs payable under paragraph (a) above) of (E)1 million (one million euros); and
 - (bb) so that, if the total amounts agreed to be paid in settlement (including legal costs payable under paragraph (a) above) are less than (E)1 million (one million euros), the Sellers shall in addition pay to the Purchasers' Guarantor for the account of the Purchasers 30% (thirty per cent) of the amount of that shortfall.
- (3) Only the following paragraphs of Schedule 5 (Limitations on Claims) shall apply to the agreement to indemnify pursuant to this Clause 11.1, namely Paragraphs 1 (Notification), 4 (Maximum Liability), 5 (No Double Recovery) 6 (Recovery from Third Parties) 7 (Conduct of Claims) and 8 (Duty to Mitigate).
- (4) Notwithstanding any other provision of this Agreement, the agreement to indemnify pursuant to this Clause 11.1 shall be the sole remedy of the Purchasers and all members of the Purchasers' Group and/or any member of the Group against the Sellers in respect of the Zoller Infringement Claim.
- 11.2 Swedish Charges Certificates
- (1) For the purposes of this Clause 11.2 "Lost Certificates" means the floating charge certificates of Norba AB numbered 770209.1.84 (SEK 1 million), 770209.1.87 (SEK 1 million), 770209.1.88 (SEK 1 million), 780322.6.22 (SEK 1 million), 780322.6.24 (SEK 1 million), 780322.6.26 (SEK 1 million), 780322.6.28 (SEK 1 million), 780322.6.30 (SEK 1 million), 810506.10.77 (SEK 3 million) and 820630.22.93 (SEK 3 million).
- (2) The Sellers undertake to the Purchasers to indemnify and keep indemnified the Purchasers or any members of the Purchasers' Group and/or any member of the Group against all and any actions, claims, demands, and reasonable costs, charges and expenses which may be incurred by any member of the Purchasers' Group and/or any member of

the Group in relation to:

(a) the cancellation of the Lost Certificates; or

(b) any third party in whose favour the Lost Certificates may have been pledged as at the date of Completion seeking to enforce the security constituted thereby.

(3) No claim for indemnification pursuant to this Clause 11.2 shall be brought after the expiry of a period of five (5) years commencing on the Completion Date, provided that this Clause 11.2(3) shall not apply for so long as the Purchasers comply with their obligations under the first sentence of Clause 11.2(5).

(4) Only the following paragraphs of Schedule 5 (Limitations on Claims) shall apply to the agreement to indemnify pursuant to this Clause 11.2, namely Paragraphs 1 (Notification), 4 (Maximum Liability), 5 (No Double Recovery) 6 (Recovery from Third Parties) 7 (Conduct of Claims) and 8 (Duty to Mitigate).

(5) Without prejudice to the provisions of Clause 11.2(4), the Purchasers shall procure that Norba AB shall take all appropriate steps to cancel the Lost Certificates as soon as practicable pursuant to the proceedings therefor initiated prior to the date of this Agreement before the Malmö City Court. The Purchasers shall keep the Sellers informed on a timely basis as to the steps which are being taken in connection with such cancellation.

12. ANNOUNCEMENTS AND CONFIDENTIALITY

12.1 No announcements without prior approval

Subject to Clause 12.2 (Announcement exceptions), the parties mutually agree that no press or other public announcements (whether to shareholders, employees, customers, suppliers or otherwise) shall be made or sent out by any of them in respect of the sale and purchase of the Companies or the Subsidiaries or any ancillary matter without the text of the announcement receiving the prior written approval of the Purchasers' Guarantor (in the case of the Sellers and the Sellers' Guarantor) or the Sellers' Guarantor (in the case of the Purchasers and the Purchasers' Guarantor) (that approval not to be unreasonably withheld or delayed).

12.2 Announcement exceptions

Any party may make or send out any press or public announcement to the

extent the announcement is:

(a) required by the law of any relevant jurisdiction;

(b) required by any securities exchange or regulatory or governmental body to which any of the parties is subject or submits, wherever situated, including (without limitation) the London Stock Exchange, the UK Listing Authority,

the Takeover Panel, the Securities Exchange Commission or NASD whether or not the requirement for information has the force of law

in which case, the announcement shall only be made or sent out after consultation with (and after taking into account the reasonable requirements of) the Purchasers' Guarantor (in the case of the Sellers and the Sellers' Guarantor) or the Sellers' Guarantor (in the case of the Purchasers and the Purchasers' Guarantor) as to the content of the announcement.

12.3 Confidentiality

Subject to Clause 12.1 (No announcements without prior approval), each of the parties shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:

- (a) the provisions of this Agreement or the other documents referred to in this Agreement;
- (b) the negotiations relating to this Agreement; or
- (c) any of the other parties.

12.4 Confidentiality exceptions

Any party may disclose information referred to in Clause 12.3 (Confidentiality) which would otherwise be confidential if and to the

extent the disclosure is:

- (a) required by the law of any relevant jurisdiction;
- (b) properly required by any securities exchange or regulatory or governmental body to which any party is subject or reasonably submits, wherever situated, including (without limitation) the London Stock Exchange, the UK Listing Authority, the Takeover Panel, the Securities Exchange Commission or NASD;
- (c) required to vest in that party the full benefit of this Agreement in any of the parties;
- (d) disclosed to the professional advisers, auditors or bankers of that party or any member of the Sellers' Group (in the case of the Sellers and the Sellers'

Guarantor) or any member of the Purchasers' Group (in the case of the Purchasers and the Purchasers' Guarantor);

- (e) disclosed to the officers or employees of that party or any member of the Sellers' Group (in the case of the Sellers and the Sellers' Guarantor) or any member of the Purchasers' Group (in the case of the Purchasers and the Purchasers' Guarantor) who need to know the information for the purposes of the transactions effected or contemplated by this Agreement and subject to the condition that the party making the disclosure shall procure that those persons comply with Clause 12.3 (Confidentiality) as if they were parties to this Agreement;
- (f) of information that has already come into the public domain through no fault of that party; or
- (g) of information of the kind referred to in Clause 12.3(c) which is already lawfully in the possession of that party as evidenced by its or its professional advisers' written records;
- (h) approved by the Sellers' Guarantor or the Purchasers' Guarantor (as the case may be) having given prior written approval to the disclosure, (that approval not to be unreasonably withheld or delayed)

provided that any information disclosed pursuant to paragraph (a) or (b) of this Clause 12.4 (Confidentiality exceptions) shall be disclosed only after notice to the Sellers' Guarantor or the Purchasers' Guarantor (as the case may be) and the disclosing party shall co-operate with the Sellers' Guarantor or the Purchasers' Guarantor (as the case may be) regarding the manner of that disclosure or any action which the Sellers' Guarantor or the Purchasers' Guarantor (as the case may be) may elect to take to challenge legally the validity of that requirement.

12.5 No limit in time

The restrictions contained in this Clause 12 shall continue to apply for three years after Completion.

12.6 No prejudice to Confidentiality Agreement

This Clause 12 (Announcements and Confidentiality) shall be without prejudice to the provisions of (including any termination dates provided therein) the Confidentiality

Agreement, which shall be deemed for the purposes of this Agreement to continue in full force and effect despite Completion.

12.7 Continuance of Exclusivity Agreement

The provisions of the Exclusivity Agreement shall be deemed to continue to apply (notwithstanding their prior expiry) from the date of this Agreement until the earlier of Completion and 31 July 2001 (or such later date as the Sellers or the Purchasers (as appropriate) may have advised the Purchasers or the Sellers (as appropriate) in accordance with Clause 4.4 (If conditions not fulfilled)).

13. TAX LOSSES AND FISCAL UNITY

13.1 Norba Limited losses

- (1) The Purchasers undertake to the Sellers that they shall take all reasonable steps permitted by law to procure that Norba Limited shall surrender to the Sellers' Guarantor or as the Sellers' Guarantor may direct (but other than to Geesink Norba Limited) by way of group relief an amount no greater than the value of all sums or losses capable of being so surrendered by Norba Limited to the extent permitted by law and required by the Sellers in respect of the accounting period ending on the Balance Sheet Date (the "Norba Tax Losses"). The Sellers' Guarantor agrees it shall pay or procure the payment to Norba Limited of a sum equal to 30% of the amount of the Norba Tax Losses less an amount equal to the aggregate of sums already paid to Norba Limited on account of the Norba Tax Losses. Payment under this Clause 13.1 shall be made on the date or, if the Corporation Tax (Instalment Payments) Regulations 1998 apply, the dates, on which the tax liability of the relevant company is, or but for the surrender would have been, due and payable.
- (2) No surrender shall take place under this Clause 13.1 if the surrender would give rise to a liability to Taxation of Norba Limited for which the Purchaser could make a claim under the Tax Deed.

13.2 Geesink Norba Limited profits

- (1) The Purchasers undertake to the Sellers' Guarantor that they shall take all reasonable steps permitted by law to procure that Geesink Norba Limited shall accept a surrender by way of group relief of losses to the extent permitted by law (but other than from Norba Limited) of an amount no greater than such of its profits chargeable to corporation tax for the period ending on the Balance Sheet Date which are capable

of being relieved by such losses (the "Geesink Norba Profits") and shall procure that Geesink Norba Limited shall pay to the Sellers' Guarantor, or as the Sellers' Guarantor may direct, when the corporation tax on the Geesink Norba Profits would otherwise have payable an amount equal to 30% of the sum so surrendered less an amount equal to the aggregate of sums already paid by Geesink Norba Limited to the Seller (or as directed by the Sellers' Guarantor) on account of the liability to corporation tax in respect of the Geesink Norba Profits. Payment under this Clause 13.2 shall be made on the date or, if the Corporation Tax (Instalment Payments) Regulations 1998 apply, the dates on which the tax liability of Geesink Norba Limited is or but for the surrender would have been due and payable.

- (2) The Purchasers shall and shall procure that each of Geesink Norba Limited and Norba Limited (at the cost of the Sellers' Guarantor) signs and submits to the relevant Taxing Authority all such notices of consent to surrender and all such other documents and returns as may be necessary to ensure that full effect is given to the provisions of this Clause 13.2.

13.3 Disputes

If any dispute arises under this Clause 13.1 or 13.2 as to the amount of any surrender that may be permitted by law, such dispute shall be referred for determination to a firm of independent chartered accountants agreed between the Sellers' Guarantor and the Purchasers and failing such agreement a firm of independent chartered accountants shall be nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales (the "Expert") who in making such determination shall act as expert and not arbitrator and whose decision shall be final and binding on the parties thereto subject to any challenge by a Taxing Authority. The Expert may make such enquiries as he shall think fit in order to make such determination and shall also determine how the costs of obtaining his opinion should be paid and borne by the parties.

13.4 Denial of Surrenders

To the extent that the surrenders of group relief pursuant to Clause 13.1 or 13.2 are subsequently denied or varied by a Tax Authority, adjustments shall be made to the payments made for the surrender of the group relief as appropriate and the sum by which any payment exceeds the amount of Tax relieved shall be repaid as appropriate.

13.5 Fiscal Unity

- (1) If requested by Powell Duffryn Holdings BV in writing, there shall be paid to Powell Duffryn Holdings BV by Geesink Group BV and those of its subsidiaries which were included in the Powell Duffryn Holdings BV Dutch Fiscal Unity (the "Fiscal Unity Subsidiaries"), an amount equal to the Dutch tax due by Geesink Group BV and the Fiscal Unity Subsidiaries in respect of periods ending on or before the Balance Sheet Date.
- (2) The request from Powell Duffryn Holdings BV shall set out (i) the amounts due from each of Geesink Group BV and each of the Fiscal Unity Subsidiaries and (ii) the date on which each such amount is due to be paid to the relevant Taxing Authority.
- (3) Payment shall be made on the later of (i) 15 days following the written request by Powell Duffryn Holdings BV and (ii) 3 days prior to the date or dates on which Powell Duffryn Holdings BV is due to account for such amounts of tax to the Dutch Taxing Authorities.
- (4) Powell Duffryn Holdings BV warrants that all amounts received by it pursuant to this clause will be paid immediately to the relevant Taxing Authority on behalf of Geesink Group BV and the Fiscal Unity Subsidiaries in payment of the relevant tax liabilities of Geesink Group BV and the Fiscal Unity Subsidiaries for periods ending on or before the Balance Sheet Date (and in the same proportions as payment is made to Powell Duffryn Holdings BV under this clause).
- (5) The parties acknowledge that (i) no payment is required to be made under Clause 13.1 if and to the extent that a payment is required to be made by the Sellers under the Tax Deed and any payment due under Clause 13.1 shall be set against any payment then due from the Sellers under the Tax Deed and (ii) in each such case where payment is not required to be made under Clause 13.1, Powell Duffryn Holdings BV will discharge the relevant payments of tax on behalf of Geesink Group BV and the Fiscal Unity Subsidiaries, as appropriate, within applicable time limits.
- (6) Powell Duffryn Holdings BV will immediately on receipt from the Dutch Taxing Authorities pay to Oshkosh Group BV (as agent for Geesink Group BV and the Fiscal Unity Subsidiaries) all repayments of Tax received by Powell Duffryn Holdings BV from the Dutch Taxing Authorities in respect of instalments of Tax paid by Powell Duffryn Holdings BV on behalf of Geesink Group BV and the Fiscal Unity Subsidiaries in respect of the year to March 2002, if and to the extent that such

instalment payments of Tax by Powell Duffryn Holdings BV on behalf of Geesink Group BV and the Fiscal Unity Subsidiaries have been funded by Geesink Group BV and the Fiscal Unity Subsidiaries. Powell Duffryn Holdings BV agrees to use its reasonable endeavours to obtain such repayment of all such instalments from the Dutch Taxing Authorities as soon as possible following Completion.

14. GUARANTEES

14.1 Guarantee by Sellers' Guarantor

- (1) The Sellers' Guarantor unconditionally and irrevocably undertakes to the Purchasers:
 - (a) to procure that the Sellers shall promptly perform and discharge all present and future obligations and liabilities of the Sellers (referred to in this Clause 14.1 as the "Sellers' Guaranteed Obligations") under this Agreement; and
 - (b) that, if the Sellers fail to do so, it will itself forthwith (on demand) perform and discharge the Sellers' Guaranteed Obligations and indemnify the Purchasers against all losses, liabilities, claims, demands, costs, charges and expenses directly suffered or incurred by or made against the Purchasers in connection with or arising out of such failure.
- (2) The liability of the Sellers' Guarantor under this Clause 14.1 shall be that of principal obligor and not merely as surety and shall not be limited, discharged or otherwise affected by any time, indulgence, waiver or concession granted by the Purchasers to the Sellers, by the invalidity, unenforceability or frustration of any of the Sellers' Guaranteed Obligations, by any lack of capacity or lack or misuse of authority on the part of the Sellers or its officers, by the liquidation, administration or dissolution of the Sellers or the disclaimer of any of the Sellers' Guaranteed Obligations by any liquidator, by any variation or termination of any of the Sellers' Guaranteed Obligations or by any other fact or circumstance which would or might (but for this Clause 14.1) limit, discharge or otherwise affect the liability of the Sellers' Guarantor.
- (3) The obligations of the Sellers' Guarantor under this Clause 14.1 are continuing obligations and shall remain in full force and effect so long as any of the Sellers' Guaranteed Obligations has yet to be fully performed or discharged.
- (4) Until all of the Sellers' Guaranteed Obligations have been fully performed and discharged the Sellers' Guarantor shall not, without the

prior written consent of the Purchasers:

- (a) exercise as against the Sellers, in respect of any amount previously paid by the Sellers' Guarantor under this guarantee, any right of subrogation or any other right or remedy which the Sellers' Guarantor may have in respect of the same; or
 - (b) prove in any liquidation of the Sellers in competition with the Purchasers for any sums owing to the Sellers' Guarantor by the Sellers.
 - (5) The obligations of the Sellers' Guarantor under this Clause shall be in addition to and shall not merge with or be prejudiced by any collateral or other security now or in future held by the Purchasers.
- 14.2 Guarantee by Purchasers' Guarantor
- (1) The Purchasers' Guarantor unconditionally and irrevocably undertakes to the Sellers:
 - (a) to procure that the Purchasers shall promptly perform and discharge all present and future obligations and liabilities of the Purchasers (referred to in this Clause 14.2 as the "Purchasers' Guaranteed Obligations") under this Agreement; and
 - (b) that, if the Purchasers fail to do so, it will itself forthwith (on demand) perform and discharge the Purchasers' Guaranteed Obligations and indemnify the Sellers against all losses, liabilities, claims, demands, costs, charges and expenses directly suffered or incurred by or made against the Sellers in connection with or arising out of such failure.
 - (2) The liability of the Purchasers' Guarantor under this Clause 14.2 shall be that of principal obligor and not merely as surety and shall not be limited, discharged or otherwise affected by any time, indulgence, waiver or concession granted by the Sellers to the Purchasers, by the invalidity, unenforceability or frustration of any of the Purchasers' Guaranteed Obligations, by any lack of capacity or lack or misuse of authority on the part of the Purchasers or their officers, by the liquidation, administration or dissolution of the Purchasers or the disclaimer of any of the Purchasers' Guaranteed Obligations by any liquidator, by any variation or termination of any of the Purchasers' Guaranteed Obligations or by any other fact or circumstance which would or might (but for this Clause 14.2) limit, discharge or otherwise affect the liability of the Purchasers' Guarantor.

- (3) The obligations of the Purchasers' Guarantor under this Clause 14.2 are continuing obligations and shall remain in full force and effect so long as any of the Purchasers' Guaranteed Obligations has yet to be fully performed or discharged.
- (4) Until all of the Purchasers' Guaranteed Obligations have been fully performed and discharged the Purchasers' Guarantor shall not, without the prior written consent of the Sellers:
- (a) exercise as against the Purchasers, in respect of any amount previously paid by the Purchasers' Guarantor under this guarantee, any right of subrogation or any other right or remedy which the Purchasers' Guarantor may have in respect of the same; or
 - (b) prove in any liquidation of the Purchasers in competition with the Sellers for any sums owing to the Purchasers' Guarantor by the Purchaser.
- (5) The obligations of the Purchasers' Guarantor under this Clause shall be in addition to and shall not merge with or be prejudiced by any collateral or other security now or in future held by the Sellers.

15. COSTS

Each party shall be responsible for all the costs, charges and expenses incurred by it in connection with and incidental to the preparation and completion of this Agreement, the other documents referred to in this Agreement and the sale and purchase under this Agreement. The Purchasers shall be responsible for any stamp duty or stamp duty reserve tax and any equivalent Tax under the laws of any other relevant jurisdiction payable in respect of the transfer of the Shares.

16. ENTIRE AGREEMENT

16.1 Entire agreement

This Agreement and the Agreed Form Documents together represent the whole and only agreement between the parties in relation to the sale and purchase of the Shares and supersede any previous agreement whether written or oral between the parties in relation to that subject matter. Accordingly, all other terms, conditions, representations, warranties and other statements which would otherwise be implied (by law or otherwise) shall not form part of this Agreement.

16.2 No liability unless statement made fraudulently

The Sellers shall not be liable in equity, contract or tort or under the Misrepresentation Act 1967 or in any other way in respect of any representation, warranty or other statement (other than liability in contract in respect of the Warranties and the other provisions of this Agreement and the Agreed Form Documents (save for the Disclosure Letter and the Purchasers' Banking Schedule)) being false, inaccurate or incomplete unless it was made fraudulently.

16.3 No reliance

The Purchasers acknowledge that in entering into this Agreement and the Agreed Form Documents they place no reliance on any representation, warranty or other statement of fact or opinion save for the Warranties and the other provisions of this Agreement and the Agreed Form Documents (other than the Disclosure Letter and the Purchasers' Banking Schedule).

17. CONTINUING EFFECT

Each provision of this Agreement shall continue in full force and effect after Completion, except to the extent that a provision has been fully performed on or before Completion.

18. INVALIDITY

If all or any part of any provision of this Agreement shall be or become illegal, invalid or unenforceable in any respect, then the remainder of such provision and/or all other provisions of this Agreement shall remain valid and enforceable.

19. AMENDMENTS, VARIATIONS AND WAIVERS

19.1 Amendments

No amendment or variation of the terms of this Agreement, the Disclosure Letter or the Deed of Covenant shall be effective unless it is made or confirmed in a written document signed by all of the parties to the relevant document.

19.2 Waivers

No delay in exercising or non-exercise by any party of any right, power or remedy under or in connection with this Agreement or any other document referred to in it shall impair that right, power or remedy or operate as a waiver or release of it.

20. FURTHER ASSURANCE AND ASSISTANCE

20.1 Further assurance

Each of the parties shall from time to time at its own cost, on being required to do so by any of the other parties now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the party concerned as the party concerned may reasonably consider necessary for giving full effect to this Agreement and securing to it the full benefit of the rights, powers and remedies conferred upon it in this Agreement.

20.2 Books and records

As from the Completion Date, each of the parties shall give to each of the other parties such reasonable access to the books, accounts, records and returns of that other, and provide such information, relating to or in connection with the Companies and the Subsidiaries as that other may require including the right to take copies and extracts on reasonable advance notice within the period of three calendar years from the Completion Date.

20.3 Availability of employees and information

(1) After the date of this Agreement and up to Completion the Sellers shall make or shall procure that there are made available to the Purchasers the reasonable assistance of such of the employees of the Group and the Sellers' Group and such reasonable management information as the Purchasers may reasonably require in order to:

(a) keep the Purchasers reasonably informed as to the day-to-day operation of the Group prior to Completion (which shall include the provision of monthly management accounts prepared on a basis consistent in all respects with the Management Accounts no later than 20 calendar days following the end of the relevant month); and

- (b) plan for the integration of the Group into the Purchasers' Group including at least a monthly conference call with the senior management of the Group.
- (2) Following Completion, the Sellers shall make or shall procure that there are made available to the Purchasers the reasonable assistance of those employees of Powell Duffryn Limited who have had day to day specific involvement in the affairs of the Group, being Stephen Harris, Roger Lee, Adrian Darling and Franco Martinelli, such employees only being made available in relation to those matters with which they have had specific involvement and for such period as is the shorter of 12 months following Completion and such employees ceasing their employment with Powell Duffryn Limited, provided that such employees shall not be made available if in the reasonable opinion of the Seller this would prejudice their ability to perform their continuing duties as employees of Powell Duffryn Limited and provided further that the Sellers shall be entitled to charge a reasonable fee for the time and services of such employees as provided.

20.4 Availability of employees after Completion

Without prejudice to the rights and obligations set out in Clause 10.1(c) and 10.2(4)(c), after the Completion Date, the Purchasers shall make available to the Sellers the assistance of such of their and the other members of the Purchasers Group's employees from time to time as the Sellers may reasonably require in connection with the conduct of proceedings against the Sellers or other members of the Sellers' Group and of which such employees have particular knowledge by virtue of their involvement in the matter giving rise to those proceedings or otherwise provided that in the reasonable opinion of the Purchasers there shall be no conflict of interest between any of the Purchaser, such Sellers or such members of the Guarantor's Group and such employee at any time in such matter and further provided that the Purchasers shall be entitled to charge a reasonable fee for the time and services of such employees so provided.

21. COUNTERPARTS

21.1 Any number of counterparts

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each of the parties has executed at least one counterpart.

21.2 Each counterpart an original

Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute but one and the same instrument.

22. ASSIGNMENT AND THIRD PARTY RIGHTS

22.1 Agreement binding on successors and permitted assignees

This Agreement shall be binding on and enure for the benefit of the successors and permitted assignees of the parties.

22.2 Benefit of agreement not assignable

The benefit of this Agreement may not be assigned, transferred, charged or dealt in (whether by way of security, trust or otherwise) either in whole or in part to any person except as provided in Clause 22.3 (Permitted assignments).

22.3 Permitted assignments

Any of the Sellers or the Purchasers may assign all or any of their respective rights under this Agreement:

- (a) to any person with the prior written consent of Purchasers' Guarantor (in the case of a Seller) or the Seller's Guarantor (in the case of a Purchaser);
- (b) without the consent in accordance with Clause 22.3(a) above to one or more members of the Sellers' Group (in the case of a Seller) or the Purchasers' Group (in the case of a Purchaser) subject to the condition that the relevant Seller or Purchaser (as appropriate) will procure that, before any assignee subsequently ceases to be a member of the Sellers' Group (in the case of a Seller) or the Purchasers' Group (in the case of a Purchaser), that assignee shall assign back to the relevant Seller or Purchaser (as appropriate), or to another member of the Sellers' Group (in the case of a Seller) or the Purchasers' Group (in the case of a Purchaser) (which itself shall then be deemed to be an assignee of the relevant Seller or Purchaser (as appropriate) for the purposes of this Clause 22.3 (Permitted assignments)), so much of the benefit of this Agreement as has been assigned to it

provided that the liability of the Sellers as a result of any assignment by a Purchaser shall not be greater than their liability had no assignment occurred and that any purported assignment in contravention of this clause shall be void.

22.4 No Rights of Third Parties

The parties do not intend any provision of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. NOTICES

23.1 Form of notices

All notices and other communications relating to this Agreement:

- (a) shall be in English and in writing;
- (b) shall be delivered by hand or sent by post or facsimile;
- (c) subject to Clause 25.3 (Agent for service of process), shall be delivered or sent to the party concerned at the relevant address or number, as appropriate, and marked as shown in Clause 23.2 (Initial details of the parties), subject to such amendments as may be notified from time to time in accordance with this clause by the relevant party to the other parties by no less than 15 Business Days' notice, except that no party may so notify an address outside England and Wales;
- (d) shall take effect only upon actual receipt at the appropriate address and for these purposes, a facsimile is received when a complete and legible copy of the communication, whether that sent by facsimile or a hard copy sent by post or hand, has been received. However, if any communication would otherwise become effective on a non-Business Day or after 5 p.m. on a Business Day, it shall instead become effective at 10 a.m. on the next Business Day. Section 196 Law of Property Act 1925 shall not apply to this Agreement.

23.2 Initial details of the parties

The initial details for the purposes of Clause 23.1 (Form of notices) are:

Party :	Powell Duffryn Limited, Powell Duffryn Holdings BV, Powell Duffryn (International)
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Address :	Limited and/or Powell Duffryn Investments Limited c/o Nikko Principal Investments Limited 100 Pall Mall London SW1Y 5NN 00 44 20 7799 7903 Quentin Zentner
Facsimile No :	
Marked for the Attention of :	
Party :	Oshkosh Group BV
Address :	2307 Oregon Street Oshkosh W I 54902 U.S.A. 00 1 920 233 9251 Tim Dempsey
Facsimile No :	
Marked for the Attention of :	
Party :	Oshkosh European Holdings SL
Address :	2307 Oregon Street Oshkosh W I 54902 U.S.A. 00 1 920 233 9251 Tim Dempsey
Facsimile No :	
Marked for the Attention of :	
Copy to (in the case of notice to the Purchasers):	Nicholson Graham & Jones
Address :	110 Cannon Street London EC4N 6AR United Kingdom + 44 20 7 360 6324 Alex Woodfield
Facsimile No :	
Marked for the Attention of :	

Copy to (in the case of notice to the Purchasers):
Address :
Facsimile No :
Marked for the Attention of :

Foley & Lardner
Firststar Centre
777 East Wisconsin Avenue
Milwaukee
Wisconsin 53202 - 5367
U.S.A
00 1 414 297 4900
Benjamin Garmer

24. CURRENCY CONVERSION

For the purpose of converting amounts specified in one currency into another currency where required, the rate of exchange to be used in converting amounts specified in one currency into another currency shall be the closing mid-point rate for exchanges between those currencies quoted in the Financial Times (London edition) for the nearest Business Day for which that rate is so quoted on or prior to the date of the conversion.

25. GOVERNING LAW AND JURISDICTION

25.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

25.2 Jurisdiction

The parties irrevocably submit to the non-exclusive jurisdiction of the English Courts to settle any disputes which may arise out of or in connection with this Agreement and agree that accordingly any Proceedings may be brought in those courts.

25.3 Agent for service of process

- (1) Each of the Purchasers and the Purchasers' Guarantor irrevocably agrees that any process may be sufficiently and effectively served on it in connection with Proceedings in England by service on its agent, the Purchasers' Solicitors, in accordance with the provisions of Clause 23 (Notices). In the event of the Purchasers' Solicitors (or any replacement agent) ceasing so to act, each of the Purchasers and the Purchasers' Guarantor undertakes to appoint another person as its agent for that purpose and to procure that notice of that appointment is given to the Sellers in accordance with the provisions of Clause 23 (Notices).

- (2) Each of the Sellers and the Sellers' Guarantor irrevocably agrees that any process may be sufficiently and effectively served on it in connection with Proceedings in England by service on its agent, Nikko Principal Investments Limited of 100 Pall Mall, London SW15Y 5NN, in accordance with the provisions of Clause 23 (Notices). In the event of Nikko Principal Investments Limited (or any replacement agent) ceasing so to act, each of the Sellers and the Sellers' Guarantor undertakes to appoint another person as its agent for that purpose and to procure that notice of that appointment is given to the Purchasers in accordance with the provisions of Clause 23 (Notices).

EXECUTION

The parties have shown their acceptance of the terms of this Agreement by executing it at the end of the Schedules.

SCHEDULE 1

Part 1 : Details of the Companies

Name	: Geesink Group BV
Date of Incorporation	: 13 December 1969
Place of Incorporation	: The Netherlands
Company Number	: 17011545
Registered Office	: Betonweg 8, 8305 AG Emmeloord, The Netherlands
Directors	: GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands DEJ Stuifmeel Wallenburg 11 3707 AP Zeist The Netherlands WAJ Nieuwenhuijzen Elskamp 30 7721 WV Dalfsen The Netherlands
Authorised Share Capital	: EUR 500,000 divided into 5,000 shares of EUR 100 each
Issued Share Capital	: EUR 132,400 divided into 1,324 shares of EUR 100 each
Shareholder	: Powell Duffryn Holdings BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 1,324 shares of EUR 100 each

Name	: Norba AB
Date of Incorporation	: 4 May 1914
Place of Incorporation	: Sweden
Company Number	: 556012-0882
Registered Office	: Box 7, 384 21 Blomstermala, Sweden
Directors	: SC Harris Northolt Thames Street Sunbury-on-Thames Middlesex TW16 6AG United Kingdom GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands WAJ Nieuwenhuijzen Elskamp 30 7721 WV Dalfsen The Netherlands C Olsson Monsterasvagen 610 884 31 Blomstermala Sweden E Sturesson Promenaden 5 38400 Blomstermala Sweden
Authorised Share Capital	: SEK 13,000,000 to SEK 52,000,000 (divided as set out in the articles of association)
Issued Share Capital	: SEK 13,000,000 divided into 72,800 Series A shares of SEK 125 each and 31,200 series B shares of SEK 125 each

Shareholder

: Powell Duffryn (International) Limited of
Powell Duffryn House, London Road, Bracknell,
Berkshire RG12 2AQ, United Kingdom

72,800 Series A shares of SEK 125
each and 31,200 series B shares of
SEK 125 each

Name	: Geesink Norba Limited
Date of Incorporation	: 28 October 1935
Place of Incorporation	: England and Wales
Company Number	: 306452
Registered Office	: Llantrisant Business Park, Llantrisant Pontyclun, Mid Glamorgan CF72 8XZ
Directors	: JL Carey 4 Coed Isaf Road Maesycoed Pontypridd Mid Glamorgan CF37 1EL United Kingdom JD Clowes The Cross Llanblethian Cowbridge South Glamorgan CF7 7JE United Kingdom SC Harris Northolt Thames Street Sunbury-on-Thames Middlesex TW16 6AG United Kingdom GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands
Secretary	: JL Carey 4 Coed Isaf Road Maesycoed Pontypridd Mid Glamorgan CF37 1EL United Kingdom
Authorised Share Capital	: (pound)10,000,000 divided into ordinary shares of(pound)1 each

Issued Share Capital	:	(pound)1,729,865 divided into 1,729,865 ordinary shares of(pound)1 each
Member	:	Powell Duffryn Investments Limited of Powell Duffryn House, London Road, Bracknell, Berkshire RG12 2AQ, United Kingdom 1,729,865 ordinary shares of(pound)1 each

Part 2 : Details of the Subsidiaries

Name	: Geesink BV
Date of Incorporation	: 2 July 1953
Place of Incorporation	: The Netherlands
Company Number	: 39018794
Registered Office	: Betonweg 8, 8305 AG Emmeloord, The Netherlands
Director	: Geesink Group BV Betonweg 8 8305 AG Emmeloord The Netherlands
Authorised Share Capital	: NLG 10,000,000 divided into 10,000 shares of NLG 1,000 each
Issued Share Capital	: NLG 2,352,000 divided into 2,352 shares of NLG 1,000 each
Shareholder	: Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 2,352 shares of NLG 1,000 each

Name	: Geesink Kiggen BV
Date of Incorporation	: 23 July 1976
Place of Incorporation	: The Netherlands
Company Number	: 17038142
Registered Office	: Den Engelsman 1, 6026 RB Maarheeze, The Netherlands
Director	: Geesink Group BV Betonweg 8 8305 AG Emmeloord The Netherlands
Authorised Share Capital	: NLG 100,000 divided into 1,000 shares of NLG 100 each
Issued Share Capital	: NLG 50,000 divided into 500 shares of NLG 100 each
Shareholder	: Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 500 shares of NLG 100 each

Name	: Geesink Vastgoed BV
Date of Incorporation	: 28 February 1975
Place of Incorporation	: The Netherlands
Company Number	: 39026948
Registered Office	: Betonweg 8, 8305 AG Emmeloord, The Netherlands
Director	: Geesink Group BV Betonweg 8 8305 AG Emmeloord The Netherlands
Authorised Share Capital	: (E)113,500 divided into 1,135 shares of (E)100 each
Issued Share Capital	: (E)22,700 divided into 227 shares of (E)100 each
Shareholder	: Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 227 shares of EUR 100 each

Name	:	Kiggen Den Englesman BV
Date of Incorporation	:	19 December 1984
Place of Incorporation	:	The Netherlands
Company Number	:	17054035
Registered Office	:	Den Engelsman 1, 6026 RB Maarheeze, The Netherlands
Director	:	Geesink Group BV Betonweg 8 8305 AG Emmeloord The Netherlands
Authorised Share Capital	:	(E)113,500 divided into 1,135 shares of (E)100 each
Issued Share Capital	:	(E)22,700 divided into 227 shares of (E)100 each
Shareholder	:	Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 227 shares of EUR 100 each

Name	: Geesink Kiggen Leasing BV
Date of Incorporation	: 8 October 1979
Place of Incorporation	: The Netherlands
Company Number	: 17043784
Registered Office	: Den Engelsman 1, 6026 RB Maarheeze, The Netherlands
Director	: Geesink Group BV Betonweg 8 8305 AG Emmeloord The Netherlands
Authorised Share Capital	: (E)100,000 divided into 1,000 shares of (E)100 each
Issued Share Capital	: (E)22,700 divided into 227 shares of (E)100 each
Shareholder	: Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 227 shares of EUR 100 each

Name	: Geesink NV
Date of Incorporation	: 20 September 1992
Place of Incorporation	: Belgium
Company Number	: 561436
Registered Office	: Damstraat 195, 1980 Zemst, Belgium
Directors	: WHG van Hazendonk Lucernevlinder 141 7943 TD Meppel The Netherlands GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands
Authorised Share Capital	: BFr 5,000 divided into 5,000 shares of BFr 1 each
Issued Share Capital	: BFr 5,000 divided into 5,000 shares of BFr 1 each
Shareholders	: Geesink Group BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 4,999 shares of BFr 1 each Powell Duffryn Holdings BV of Betonweg 8, 8305 AG Emmeloord, The Netherlands 1 share of Bfr 1 each

Name : Geesink Polska Sp.z o.o
Date of Incorporation : 26 July 1999
Place of Incorporation : Poland

State Statistical Office Number: 671953559

Company Number : RHB 7984
Registered Office : ul.Partyzanka 94/108, 95-200 Pabianice, Poland
Directors : GMJM Spruit
Richel 1
8303 KX Emmeloord
The Netherlands

WAJ Nieuwenhuijzen
Elskamp 30
7721 WV Dalfsen
The Netherlands

ABN Laarhoven
Gierwal 5
8347 JN Eesveen
The Netherlands

J Lis
u. Inowroclawska 9 m 192
91-033 Lodz
Poland

Authorised Share Capital : PLN 4,000 divided into 40 shares of PLN
100 each

Issued Share Capital : PLN 4,000 divided into 40 shares of PLN
100 each

Shareholders : Geesink Group BV of Betonweg 8, 8305
AG Emmeloord, The Netherlands
39 shares of PLN 100 each

Geesink BV of Betonweg 8, 8305 AG
Emmeloord, The Netherlands 1 share
of PLN 100

Name	: Norba A/S
Date of Incorporation	: 16 December 1976
Place of Incorporation	: Denmark
Company Number	: 61359
Registered Office	: Silovej 40, 2690 Karlslunde, Denmark
Directors	: GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands WAJ Nieuwenhuijzen Elskamp 30 7721 WV Dalfsen The Netherlands SC Harris Northolt Thames Street Sunbury-on-Thames Middlesex TW16 6AG United Kingdom K R J0rgensen Frugt parken 16 DK-4300 Holbek Denmark
Authorised Share Capital	: DKK 500,000 divided into 500 shares of DKK 1,000 each
Issued Share Capital	: DKK 500,000 divided into 500 shares of DKK 1,000 each
Shareholder	: Norba AB, Box 7, 384 21 Blomstermala, Sweden 500 shares of DKK 1,000 each

Name	:	Norba Limited
Date of Incorporation	:	23 July 1987
Place of Incorporation	:	England and Wales
Company Number	:	2149768
Registered Office	:	Cargotec Industrial Park, St Martins Road, Ellesmere, Shropshire SY12 9JW
Directors	:	GMJM Spruit Richel 1 8303 KX Emmeloord The Netherlands WAJ Nieuwenhuijzen Elskamp 30 7721 WV Dalfsen The Netherlands SC Harris Northolt Thames Street Sunbury-on-Thames Middlesex TW16 6AG JD Clowes The Cross Llanblethian Cowbridge South Glamorgan CF7 7JE United Kingdom
Secretary	:	WAJ Nieuwenhuijzen Elskamp 30 Dalfsen 7721 WV The Netherlands
Authorised Share Capital	:	(pound)1,000,000 divided into 1,000,000 ordinary shares of(pound)1 each
Issued Share Capital	:	(pound)1,000,000 divided into 1,000,000 ordinary shares of(pound)1 each

Member : Norba AB of Box 7, 384 21 Blomstermala, Sweden 1,000,000 ordinary shares of(pound)1 each

Name : Sertek Limited
 Date of Incorporation : 31 January 1990
 Place of Incorporation : England and Wales
 Company Number : 2465661
 Registered Office : Cargotec Industrial Park, Ellesmere,
 Shropshire SY12 9JW
 Directors : EA Wenger
 8 The Springs
 Sundorne Grove
 Shrewsbury
 Shropshire
 United Kingdom
 JD Clowes
 The Cross
 Llanblethian
 Cowbridge
 South Glamorgan CF7 7JE
 United Kingdom
 Secretary : JL Carey
 4 Coed Isaf Road
 Maesyscoed
 Pontypridd
 Mid Glamorgan CF37 1EL
 United Kingdom
 Authorised Share Capital : (pound)1,000,000 divided into (pound)1,000,000
 shares of (pound)1 each
 Issued Share Capital : (pound)2 divided into 2 shares of (pound)1 each
 Member : Norba Limited of Cargotec Industrial Park,
 Ellesmere, Shropshire SY12 9JW
 2 shares of (pound)1 each

Name	: Sheppard Meiller Limited
Date of Incorporation	: 28 January 1986
Place of Incorporation	: England and Wales
Company Number	: 1983338
Registered Office	: Llantrisant Business Park, Llantrisant, Pontyclun, Mid Glamorgan CF72 8XZ
Directors	: JD Clowes The Cross Llanblethian Cowbridge South Glamorgan CF7 7JE United Kingdom
Secretary	: JL Carey 4 Coed Isaf Road Maesycloed Pontypridd Mid Glamorgan CF37 1EL United Kingdom
Authorised Share Capital	: (pound)100 divided into 100 ordinary shares of (pound)1 each
Issued Share Capital	: (pound)100 divided into 100 ordinary shares of (pound)1 each
Members	: Geesink Norba Limited of Llantrisant Business Park, Llantrisant, Pontyclun, Mid Glamorgan 99 ordinary shares of (pound)1 each SA Thomas of The Folly, Church Road, Llanblethian, Cowbridge, South Glamorgan 1 ordinary share of (pound)1

Part 3: Shares to be Sold

Seller	Shares to be sold	Purchaser
Powell Duffryn Holdings BV	1,324 shares of EUR 100 each in the capital of Geesink Group B.V.	Oshkosh Group
	1 share of Bfrl in the capital of Geesink N.V.	Oshkosh European Holdings
Powell Duffryn (International) Limited	72,800 series A shares of SEK 125 each and 31,200 series B shares of SEK 125 each in the capital of Norba AB	Oshkosh European Holdings
Powell Duffryn Investments Limited	1,728,865 ordinary shares of (pound)1 each in the capital of Geesink Norba Limited	Oshkosh European Holdings

SCHEDULE 2

COMPANY INTELLECTUAL PROPERTY

A. TRADE MARKS

Trade marks owned by Geesink Norba Limited

TM No.	Mark Text	Country	Status	Classes
897580	ROLONOF	UK	Registered	06
897581	ROLONOF	UK	Registered	12
904544	WESSEX DRAGON	UK	Registered	12
922163	ROLONOF	UK	Registered	07
1009799	ROLONOF	UK	Registered	06
1009800	ROLONOF	UK	Registered	12
1015775	ROLONOF	UK	Registered	07
1147639	WASTERIDER	UK	Registered	12
1156705	SKIP-PAK	UK	Registered	06
1194143	VULTURE	UK	Registered	12
1216780	DRAGON	UK	Registered	07
1216781	DRAGON	UK	Registered	12
1259496	SKIPPER	UK	Registered	07
1259497	SKIPPER	UK	Registered	12
1383587	TORNADO	UK	Registered	07
1437629	RETRIEVER	UK	Registered	07
1437630	RETRIEVER	UK	Registered	12
1437631	RETRIEVER	UK	Registered	37
1453851	SHEPPARD	UK	Registered	07
1453852	SHEPPARD	UK	Registered	12
1453853	SHEPPARD	UK	Registered	37
1459626	COMBIPAL	UK	Registered	07
1459627	COMBIPAL	UK	Registered	12
1459628	COMBIHOIST	UK	Registered	07
1459629	COMBIHOIST	UK	Registered	12

1526419	COMBIPAL	UK	Registered	37
1526430	COMBIHOIST	UK	Registered	37
2163596	PDE GEESINK POWERDRIVE	UK	Registered	07

Trade marks owned by Geesink Group BV

TM No.	Mark Text	Country	Status	Classes
1487100	DIAGON	UK	Registered	06
980563	GEESINK	Benelux	Application	6, 7, 12
500546	DIAGON	Benelux	Registered	6, 20, 39
498883	LOGON	Benelux	Registered	12, 39, 42
980562	KIGGEN	Benelux	Application	6, 7, 12
523868	MKM KIGGEN	Benelux	Registered	6, 7, 12, 20, 39, 42
363862	MKM	Benelux	Registered	6, 7
2021806	GEESINK	CTM	Application	6, 7, 12
614430	MKM KIGGEN	International	Registered	6, 7, 12, 20, 39, 42
583613	LOGON	International	Registered	12, 39, 42
580951	DIAGON	International	Registered	6, 20, 39

Trade marks owned by Geesink B.V.

TM No.	Mark Text	Country	Status	Classes
96/648629	ORDUMAT PD	France	Registered	6, 7, 12
401273	GEESINK PD	CTM	Registered	6, 7, 12

Trade marks owned by Norba AB

TM No.	Mark Text	Country	Status	Classes
831931	NORBA	UK	Registered	07
831932	NORBA	UK	Registered	12

831933	NORBA	UK	Registered	21
738946M	NORBA	Spain	Registered	7
738947M	NORBA	Spain	Registered	12
738948M	NORBA	Spain	Registered	21
431498	NORBA	Switzerland	Registered	7, 12, 21
414325	NORBA	Italy	Registered	7, 12, 21
0756817	NORBA	US Federal	Registered	7
0756819	NORBA	US Federal	Registered	21
756740	NORBA	US Federal	Registered	12
4093	NORBA	Benelux	Registered	7, 12, 21
1397354	NORBA	France	Registered	7, 12, 21
779156	NORBA	Germany	Registered	7, 12
52546	NORBA	Austria	Registered	7, 9, 12, 17, 21
A173531	NORBA	Australia		7
A173533	NORBA	Australia		12
A173534	NORBA	Australia		21
14540	NORBA	Estonia		7, 12, 21
56814	NORBA	Finland		7, 12, 21
95723	NORBA	Israel		7
95724	NORBA	Israel		12
95725	NORBA	Israel		21
M921875 M31156	NORBA	Latvia		7, 12, 21
ZP2732/21199	NORBA	Lithuania		7, 12, 21
78322	NORBA	Norway		12
26468	NORBA	Norway		6, 7
125580	NORBA	Russia		7
103452	NORBA	Sweden		7, 12, 21
144228	NORBA	Hungary		7, 12, 21

B. PATENTS

Patents owned by Geesink B.V.

Patent Title	Patent number	Country(ies) applied for	Expiry
Collecting container	GB2217289	Great Britain	22.04.2008
Multiple compartment refuse lorry	EP0314238 NO0170070 DK0166269 DE3860152.2	Austria Belgium Switzerland Germany France Great Britain Luxembourg Netherlands Sweden Norway Denmark	18.10.2008 25.10.2008 26.10.2008
Lifting device for refuse containers	IE65271 GB2243138	Ireland Great Britain	10.04.2011 12.04.2011
Container pick-up safety system	EP0478049 DE69110228.7	Germany Spain France Great Britain Netherlands	13.09.2011
Multiple compartment refuse lorry-glass	EP0492699 DE69108208.1	Austria Belgium Switzerland Germany France Great Britain Luxembourg Netherlands	11.12.2011
Sealing device for interchangeable containers	EP0701527 DE69401753.1	Belgium Switzerland Germany Spain France Great Britain Netherlands	02.06.2014
Wash and refuse lorry GWA	EP0628500 DE69405298.1	Austria Belgium Switzerland Germany	10.06.2014

Patent Title	Patent number	Country(ies) applied for	Expiry
		Spain France Great Britain Ireland Italy Luxembourg Netherlands Monaco	
Vehicle with safety means	EP0671346 DE69506296.4	Belgium Germany Spain France Great Britain Netherlands	07.03.2015
Refuse collection vehicle with footboard	EP0683115 DE69503834.6	Austria Belgium Switzerland Germany Denmark Spain France Great Britain Italy Liechtenstein Luxembourg Netherlands Sweden	10.05.2015
Refuse collection vehicle for bottom discharge containers	EP0763487	Belgium Switzerland Germany Spain France Great Britain Netherlands	09.09.2016
Refuse Driving Safety System via parking brake	NL1001681	Netherlands	17.11.2015
Lid opener II	NL1004252	Netherlands	11.10.2002
Refuse collection vehicle with lid handling device	NL1002518	Netherlands	03.03.2002
Refuse collecting vehicle with interchangeable container	NL1002723	Netherlands	27.03.2016

Patent Title	Patent number	Country(ies) applied for	Expiry
Contactless safety system	NL1003535	Netherlands	08.07.2016
Supporting device II	NL1004165	Netherlands	01.10.2016
Control system for side loader	NL1007486	Netherlands	07.11.2017
Pick up device with pulley	NL1007723	Netherlands	08.12.2017
Side loader with camera	NL1007724	Netherlands	08.12.2017
Comb locking device	NL1007726	Netherlands	08.12.2017
Contactless safety system II	NL1007733	Netherlands	08.12.2017
Tilting hook switch	NL1007748	Netherlands	09.12.2017
Safety barrier locking device	NL1009325	Netherlands	04.06.2018
Refuse collection vehicle with interchangeable body	EP0798237 DE69703405.4	Austria Belgium Switzerland Germany Spain France Great Britain Italy Netherlands	2017 (open to opposition until 2.8.2001)
Protecting locking plate	NL1010587	Netherlands	2004
Sideloader with additional positioning	NL1013504	Netherlands	2019
Tailgate loading packer for a collecting body	EP0042191	Benelux France Germany Great Britain	9.8.2001
	NL1011031	Netherlands	

Patents owned by Geesink Group BV

Patent Title	Patent number	Country(ies) applied for	Expiry
Container for refuse	NL1005959	Netherlands	02.05.2017
Lifting device for a refuse container	NL1001923	Netherlands	18.12.2015

Patents owned by Kiggen Beheer BV (now Geesink Kiggen BV)

Patent Title	Patent number	Country(ies) applied for	Expiry
Container for refuse	NL1001039	Netherlands	24.02.2015
Container	NL1001038	Netherlands	24.08.2015
Closing mechanism for a pivoting container door	EP0760347	Austria Belgium Switzerland Germany Spain France Great Britain Greece Italy Liechtenstein Luxembourg Netherlands Sweden	16.08.2016

Patents owned by Norba AB

Patent title	Patent number	Country(ies) applied for	Expiry
Apparatus for charging solids under compression into a receptacle	308 723/US4 955 776	US	11.9.2007
Tailgate - device for loading at least two types of waste material	500653/890 11119-1 19914 543 EP0 473 603/9090 5733.3-2308 DE6000736.1	Sweden Finland Europe	30.3.2009 30.3.2010 30.3.2010
Apparatus for charging solids under compression into a receptacle	EP0329629	Austria Belgium Switzerland Germany Spain France Great Britain Greece Italy	14.01.2008

Patent title	Patent number	Country(ies) applied for	Expiry
		Liechtenstein Luxembourg Netherlands Sweden	
Device for handling refuse	EP0358622	Austria Belgium Switzerland Germany Spain France Great Britain Greece Italy Liechtenstein Netherlands Sweden	6.09.2008

Patent applications owned by Geesink B.V.

Patent title	Application number	Date of application/priority application
Contactless safety system	EP0818402	Priority NL1003535, 8.7.1996
Supporting device II	EP97202826.0	Priority NL1004165, 1.10.1996
Location detection device with pulley	CA2311917 EP1037826 NZ504883 PL341102 US09/589867	Priority NL1007723, 8.12.1997
Side loader with camera	AU15125/99 CA2311939 EP1060110 NZ504882 PL P 341104 US09/589996	Priority NL 1007724, 8.12.1997

Patent title	Application number	Date of application/priority application
Contactless safety system II	EP0928756	Priority NL1007733, 8.12.1997
Locking device	EP0962401	Priority NL1009325, 5.6.1998 and NL1010587, 8.11.1998
Side loader with detecting device	EP1020375	Priority NL1011031, 14.1.1999
Manually operated chute	EP1081062	Priority NL1012942, 31.8.1999
Refuse collection vehicle provided with a safety system	EP0774425	Priority NL1001681, 17.11.1995

Patent applications owned by Geesink Group BV

Patent title	Application number	Date of application/priority application
Pit container	EP0979202	Priority NL1005959, 2.5.1997

Patent applications owned by Norba A.B.

Patent title	Application number	Date of application/priority application
Bin grip, side loader - device for emptying different types of waste containers of square cross section	449 980/820 4995-8 (Sweden)	2.9.1982
Tailgate, Arr for waste handling vehicle	512 557 (Sweden) 19994158 (Norway) 99850130.8 (Europe - Germany, Denmark, Spain, Finland, France, Ireland, UK)	28.8.1998 27.8.1999 25.8.1999

Patent title	Application number	Date of application/priority application
Device for sorting waste	9800666-1 (Sweden)	25.9.1998

C. DESIGNS

Name	Registration Number	Country
Container	2310800	Benelux
Filling aperture underground system	2827800	Benelux

D. DOMAIN NAMES

Netherlands

geesink.com

geesinkgroup.com

geesinknorba.com

geesinknorbagroup.com

geesinkkiggen.com

presscontainers.com

refusecollectors.com

geesink.nl

geesinkgroup.nl

geesinkkiggen.nl

geesinknorba.nl

geesinknorbagroup.nl

Sweden

norba.se

norba.dk

norba.co.uk

norba.com

norba.net

geesink-norba.com

UK

norba.co.uk

pdegeesink.co.uk

pdegeesink.clara.net

geesink.co.uk

pdeservice.com

Germany

geesinknorba.de

geesinknorbagroup.de

Poland

geesink.com.pl

SCHEDULE 3

COMPLETION ARRANGEMENTS

1. SELLER'S OBLIGATIONS TO DELIVER

The Sellers shall deliver to the Purchasers at the offices of the Sellers' Solicitors, unless otherwise stated:

(a) in the Netherlands:

(i) the Dutch Notarial Deed executed as at Completion by Powell Duffryn Holdings BV;

(ii) evidence that the name of Oshkosh European Holdings has been entered into the register of members of Geesink NV; and

(iii) to the extent appropriate, the documents specified in Paragraphs 1(e), (f), (g) and (h) in respect of Geesink Group BV and the Dutch Subsidiaries;

(b) in Sweden:

(i) the share certificate(s) in respect of the Shares in the capital of Norba AB duly endorsed by Powell Duffryn (International) Limited to effect the transfer of such Shares in favour of Oshkosh Group, together with pertaining dividend coupons (if any);

(ii) the share ledger of Norba AB, showing that Oshkosh Group has been registered as the holder of all the Shares in Norba AB; and

(iii) to the extent appropriate, the documents specified in Paragraph 1(e), (f), (g) and (h) in respect of Norba AB and Norba A/S;

(c) duly executed share transfers in respect of the Shares in the capital of Geesink Norba Limited in favour of Oshkosh Group, or as it may direct, together with related share certificates for such Shares and any power of attorney or other authority under which those transfers have been executed;

(d) written resignations and releases executed as a deed, in the Agreed Terms, from Stephen Harris resigning his office as Director and releasing each

relevant Company and Subsidiary (other than in the case of Norba AB and its Subsidiaries) from all claims and rights of action whatsoever;

(e) (other than in the case of Norba AB and its Subsidiaries), the common seal (where applicable), certificate of incorporation (and any certificate of incorporation on change of name) and all statutory books, share ledgers and equivalent for each place of incorporation, of the Companies and the Subsidiaries written up to the day prior to the Completion Date;

(f) make available the documents of title (where applicable) to the Properties;

(g) the Sellers' Deed of Covenant duly executed as at Completion by the Sellers;

(h) the Tax Deed duly executed as at Completion by the Sellers; and

(i) minutes of a meeting of the directors of the Sellers and the Sellers' Guarantor authorising the execution by the Sellers and the Sellers' Guarantor of this Agreement, the Tax Deed, the Deed of Covenant and any other documentation relevant in connection with this transaction contemplated by this Agreement (those copy minutes being certified as correct by the secretary of the Sellers);

(j) Mr Harris' Deed of Covenant duly executed as at Completion by Stephen Harris; and

(k) a duly executed transfer in favour of Geesink Norba Limited in respect of the one ordinary share of (pound)1 in Sheppard Meiller Limited registered in the name of SA Thomas.

2. BOARD MEETINGS OF THE COMPANIES AND SUBSIDIARIES

(1) The Sellers shall cause to be duly held a meeting of the shareholders of Geesink Group BV and its Subsidiaries validly to effect or validly to resolve to effect the acceptance of the resignations of Stephen Harris and Adrian Darling from the supervisory board of Geesink Group BV.

(2) The Sellers shall cause to be duly held a meeting of the Board of each of Geesink Norba Limited and Norba Limited validly to effect or execute or validly to resolve to effect or execute:

(a) the approval of the said transfers of the Shares in the capital of Geesink Norba Limited to Oshkosh Group, the issue to Oshkosh Group of share certificates in

respect of those shares and the registration of Oshkosh Group as holder of those shares (subject only to those transfers being represented duly stamped);

(b) the acceptance of the resignation of Stephen Harris as Director of Geesink Norba Limited and Norba Limited; and

(c) the sealing of new share certificates for the Shares in the capital of Geesink Norba Limited in favour of the Purchasers (or their respective nominees).

3. PURCHASERS' OBLIGATIONS AT COMPLETION

Subject to the conclusion of the matters referred to in Paragraphs 1 and 2 the Purchasers shall:

(a) procure that 84.8% of the aggregate sum payable pursuant to Clause 3.2 (Payment on Account) shall immediately be paid by way of electronic transfer for same day value to the client bank account of the Sellers' Solicitors at Royal Bank of Scotland Plc (Sort Code: 16-00-19 Account No: ROMAEUR1);

(b) procure that 7.6% of the aggregate sum payable pursuant to Clause 3.2 (Payment on Account) shall immediately be paid by way of electronic transfer for same day value to the client bank account of Lovells at Rabobank (Swift Code: Rabonl2u Account No: 3135.81.614 (Derdengelden Lovells Notariaat));

(c) procure that 7.6% of the aggregate sum payable pursuant to Clause 3.2 (Payment on Account) shall immediately be paid by way of electronic transfer for same day value to the client bank account of the Mannheimer Swartling at SEB (Swiftkod: ESSE-SE-SS Account No: 5222-1048008 (Powell Duffryn));

(d) deliver to the Sellers' Solicitors a counterpart of the Sellers' Deed of Covenant and Mr Harris' Deed of Covenant, in each case duly executed by the Purchasers and the Purchasers' Guarantor;

(e) deliver to the Sellers' Solicitors the Tax Deed in the Netherlands and the Dutch Notarial Deed, in each case duly executed by Oshkosh Group and Oshkosh European Holdings respectively; and

(f) deliver to the Sellers' Solicitors a copy of the duly signed minutes of the meeting of the board of directors of the Purchasers and the Purchasers' Guarantor authorising the execution of this Agreement and the Deed of Covenant.

SCHEDULE 4

WARRANTIES

In this Schedule 4 (Warranties), references to the "Company" are references to the Companies and the Subsidiaries individually.

Part 1 - General Warranties

1. COMPANY RETURNS AND RECORDS

1.1 Particulars of the Company

The particulars of the Company and the Shares set out in Schedule 1 are true and complete.

1.2 Memorandum and articles of association

The copies of the memorandum and articles of association or other statutes and bye-laws of the Company contained in the Disclosure Letter are complete and contain all alterations or amendments made thereto prior to the date of this Agreement and fully set out all of the rights and restrictions attaching to each class of shares and loan capital of the Company.

1.3 Compliance with companies legislation

The Company has complied in all respects with the Companies Act (or relevant equivalent legislation in the jurisdiction in which it is incorporated as are or have been in force) and all returns, particulars, resolutions and other documents required under any such legislation to be delivered on behalf of the Company to any governmental or other competent authority have been properly made and delivered.

1.4 Statutory books

The register of shareholders and other statutory books and records of the Company have been properly kept and are in the possession or under the control of the Company.

1.5 Company validly existing

The Company is duly organised and validly exists under the laws of the country and state in which it is incorporated and has all requisite corporate powers and authority to own its properties and to carry on its business as presently conducted.

2. SHARES AND SHARE CAPITAL

2.1 Shares comprise all allotted and issued share capital

The Shares (or, in the case of the Subsidiaries, the shares shown in Part 2 of Schedule 1) comprise the whole of the allotted and issued share capital of the Company and all of them have been properly allotted and issued and are fully paid up.

2.2 No options or conversion rights

No person has the right to call for the issue of any share or loan capital of the Company under any option or other agreement or under any conversion rights and there is not now, and there is no agreement, arrangement or obligation (actual or contingent) to create, any Encumbrance over any shares in the Company (whether or not issued). The Company has not received written notice that any person is alleged to be entitled to any Encumbrance in relation to any of the shares in the Company (whether or not issued).

2.3 No repayment or redemption of share capital

The Company has not since the Balance Sheet Date repaid or redeemed or agreed to repay or to redeem any shares of any class of its share capital or otherwise reduced or agreed to reduce its issued share capital or any class thereof or capitalised or agreed to capitalise in the form of shares or debentures or other securities or in paying up any amounts unpaid on any shares debentures or other securities any profits or reserves of any class or description or passed or agreed to pass any resolution to do so and the Company has not received written notice that any person has or is entitled to claim any right (actual or contingent) to call for repayment or redemption of any share capital or loan capital of the Company.

2.4 Legal and Beneficial Ownership

Powell Duffryn Holdings BV is the sole legal and beneficial owner of the Shares in Geesink Group BV, Powell Duffryn (International) Limited is the sole legal and

beneficial owner of the Shares in Norba AB and Powell Duffryn Investments Limited is the sole legal and beneficial owner of the Shares in Geesink Norba Limited.

2.5 Transactions at an undervalue

None of the shares in the Company was, or represents assets which were, the subject of a transfer at an undervalue (within the meaning of Section 238 or 239 of the Insolvency Act 1986) or any other transaction capable of being set aside or varied under any insolvency laws within the past five years. This Warranty shall not apply in relation to Norba AB and its Subsidiaries prior to their acquisition in accordance with the Norba Agreement.

3. SUBSIDIARIES, PARTNERSHIPS ETC.

3.1 No subsidiaries other than the Subsidiaries

The Companies have no subsidiaries other than the Subsidiaries and are not the legal or beneficial owner of any shares or other securities or capital of any other company or corporation other than the Subsidiaries whether limited or unlimited and whether incorporated in the United Kingdom or elsewhere.

3.2 No partnership

The Company is not a member of any partnership or other unincorporated association and, save for the branches of Geesink BV in Germany, Italy, Spain and France, has no place of business, branch or permanent establishment other than in the country of its incorporation.

3.3 Details of Subsidiaries

The particulars of the Subsidiaries set out in Schedule 1 are true and complete and the whole of the issued share capital of each Subsidiary is beneficially owned by the relevant Company free from all liens, charges, encumbrances, rights of pre-emption or other equities or third party rights of any nature whatsoever.

4. ACCOUNTS

4.1 Consolidated Accounts

The Consolidated Accounts:

(a) were prepared in accordance with GAAP on a consistent basis with the financial year ending 31 March 2000; and

(b) show a true and fair view of the assets, liabilities and state of affairs of the Group and the profits and losses and cash flows of the Group for the financial year ended on the Balance Sheet Date;

having regard to the fact that such Consolidated Accounts do not constitute statutory accounts as the Group does not constitute a group for the purposes of the Companies Act.

4.2 Exceptional Items

The results shown in the Consolidated Accounts have not (except as disclosed therein) been affected by any extraordinary, exceptional or non-recurring item.

4.3 Management Accounts

The Management Accounts have been honestly and carefully prepared on bases consistent in all material respects with those employed in the preparation of the Consolidated Accounts and are not misleading.

4.4 Amounts due to Powell Duffryn Holdings B.V.

The item shown in the Consolidated Accounts as "amounts due to Powell Duffryn Holdings B.V. in respect of administrative expenses" includes only obligations arising to Powell Duffryn Holdings BV in respect of salary and other remuneration payments of an employee of a member of the Group or other properly incurred administrative expenses settled by such person which are customarily recharged by a member of the Group.

5. EVENTS SINCE BALANCE SHEET DATE

Since the Balance Sheet Date:

(a) the Company has carried on its business in the ordinary and usual course with a view to maintaining the same as a going concern and with a view to maintaining its goodwill and business relationships;

- (b) the Company has not entered into, modified or terminated any contract material to the Group as a whole (other than in the ordinary course of business);
- (c) the Company has not created, allotted, issued, repaid or redeemed any share or loan capital;
- (d) no distribution of capital or income has been declared made or paid in respect of any share capital of the Company except as provided in the Accounts and no resolution has been passed by the Company having similar effect;
- (e) there has been no, and the Management Accounts taken in isolation do not constitute a, material adverse change in the financial position of the Group and, so far as the Seller is aware, no event, fact or matter has occurred or is likely to occur which will or is likely to give rise to any such change;
- (f) the Company has not made any capital expenditure or incurred any capital commitments which are now outstanding in excess of (E)75,000 in respect of any one item or (E)500,000 in total;
- (g) the Company has not acquired or disposed of or agreed to acquire or dispose of any substantial part of its business or undertaking except in the ordinary course of business;
- (h) the Company has continued to pay its creditors in the ordinary course of its business in accordance with past practice;
- (i) the Company has not (conditionally or unconditionally) agreed to do any of the things referred to in any of the foregoing paragraphs; and
- (j) the Company has not altered its methods of calculating interest in respect of any Inter Company Debt.

6. ASSETS OF THE COMPANY

6.1 Status of assets

Except for trading stock disposed of in the ordinary course of business or assets acquired subject to retention or reservation of title by the supplier or manufacturer in the ordinary course of business, all the assets included in the Consolidated Accounts

and all assets which have been acquired by the Company since the Balance Sheet Date are:

- (a) legally and beneficially owned by the Company free from and clear of all Encumbrances (but excluding liens, retention of title and other similar encumbrances arising in the ordinary course of business);
- (b) not the subject of any hire purchase, leasing, lease purchase or credit-sale agreements, agreements for conditional sale or sale by instalments; and
- (d) in the possession of or under the control of the Company.

6.2 No hire agreements

The Company is not a party to, or liable under, a lease, hire, hire purchase, credit sale, deferred payment or conditional sale or purchase agreement where the total amount outstanding under such agreement is in excess of (E)75,000, except for those agreements details of which are set out in the Disclosure Letter.

6.3 Plant

All plant, machinery, vehicles and office equipment owned or used by the Company complies in all respects with all relevant statutes and regulations and is in reasonable repair and has been regularly maintained having regard to normal wear and tear and to the extent to which it is currently being used and is capable of being used to the extent to which and for the purposes for which it is currently being used in the business of the Company.

6.4 Stock and Raw Materials

Save as provided in the Consolidated Accounts and the Management Accounts, the Stock held or ordered by the Company is reasonably adequate, but not excessive, to satisfy the current and anticipated demands of the business of the Company (having regard to normal seasonal demand patterns), is of satisfactory quality, includes no obsolete, obsolescent or slow moving items and the Stock comprising finished goods is readily realisable and saleable at normal selling prices in the ordinary course of business.

6.5 Debts collectable

All of the debts shown in the Consolidated Accounts or the Management Accounts have realised (or will realise within a period of three months from their due dates) their full value in the ordinary course of collection less any provision for bad or doubtful debts included in the Consolidated Accounts or the Management Accounts.

6.6 No Factoring

The Company has not factored, sold or discounted any of its debts nor agreed to do so.

6.7 No Debts

There are no debts owing by or to the Company other than debts which have arisen in the ordinary course of business nor has the Company lent any money which has not been repaid.

7. LIABILITIES AND BANK ACCOUNTS

7.1 No borrowings

Except as disclosed in the Consolidated Accounts, the Management Accounts or in the Disclosure Letter the Company did not have outstanding any loan capital, borrowing or indebtedness in the nature of borrowing, including any bank overdrafts or liabilities under acceptances (other than normal trade bills) or acceptance credits as at the close of business on the day two Business Days prior to the date of this Agreement.

7.2 No default under borrowing agreements

No event has occurred which constitutes an event of default under any agreement relating to borrowing or indebtedness in the nature of borrowing or which would lead to any security constituted or created in connection with any borrowings or indebtedness in the nature of borrowing, guarantee, indemnity or other obligation of the Company becoming enforceable.

7.3 Separate bank accounts

The bank accounts of the Company are operated separately from the bank accounts of any other person (including any member of the Group) and there is no right of set off

against moneys in the Company's bank accounts for the liabilities of any other person (including any member of the Group).

7.4 Guarantees and indemnities

No guarantee or indemnity has been given by the Company in respect of the obligations or liabilities of any other person (including any member of the Group), or by any other person (including any member of the Group) in respect of any obligation or liability of the Company.

7.5 Grants and allowances

Details of all investment grants and similar payments or allowances received by the Company from any government authority are set out in the Disclosure Letter and the Company has not done or omitted to do anything which could result in all or any part of any such grant, payment or allowance becoming repayable or being forfeited.

7.6 Foreign Exchange Transactions

The Disclosure Letter sets out all outstanding contracts for the sale or purchase of foreign exchange which involve payment by any members of the Group of a gross sum in excess of (E)5,000.

8. INSOLVENCY

8.1 No winding up petition

No order has been made or petition presented or resolution passed for the winding up of the Company or for an administration order in respect of the Company nor has any distress execution or other process been levied on any of its assets nor has it stopped payment nor is it insolvent or unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986.

8.2 No receiver

No administrative receiver or receiver and manager of the business or assets of the Company or any part thereof has been appointed by any person and there is no unfulfilled or unsatisfied judgment or court order outstanding against the Company.

8.3 No arrangements

The Company has not at any time been a party to or subject to or applied for:

- (a) the sanctioning under section 425 of the Companies Act of a compromise or arrangement between it and any such persons as are mentioned in that section or the making of any other compromise with its creditors;
- (b) crystallisation of any floating charge created by it or the occurrence of any event which causes, or with the giving of any notice or making of any demand would cause, such crystallisation;
- (c) the appointment of any receiver (including any administrative receiver, as defined in the Insolvency Act 1986) over all or any or any part of its property or assets;
- (d) an encumbrancer taking possession of, or otherwise enforcing his security over, all or any or any part of its property or assets;
- (e) the levying of any distress, execution, charging order, garnishee or other process over all or any or any part of its property or assets;
- (f) the failure by it to fully satisfy any judgment (monetary or otherwise) outstanding against it in circumstances in which the judgment creditor has a present right to execute or enforce such judgment;
- (g) the issue, filing or service of any petition, application, notice, advertisement, demand, proceedings, process, circular or communication, the covering of any meeting, or the taking of any steps, or the existence of any circumstances, which may lead to the occurrence of any of the foregoing events; or
- (h) the occurrence of any event under the laws of any jurisdiction, other than England and Wales, which is analogous to any of the foregoing events.

9. RECORDS, ETC.

Books and records of the activities of the Company have been maintained at all material times in accordance with the law of the country of incorporation of the Company.

10. CONDUCT OF BUSINESS

10.1 Permits

All necessary licences, consents, permits, approvals and authorities (public and private) have been obtained by the Company to enable the Company to carry on its business lawfully in the places and in the manner in which such business is now carried on and all such licences, consents, permits, approvals and authorities are valid and subsisting and so far as the Sellers are aware the Company is not in breach of the same and the Sellers are not aware of any reason why any of such licences, consents, permits, approvals and authorities should be suspended, cancelled, modified or not renewed.

10.2 No powers of attorney

There are not in force any powers of attorney given by the Company, other than (i) powers of attorney given in the normal course of business in relation to the prosecution and maintenance of Intellectual Property and (ii) powers of attorney given to directors or employees of the Group permitting them to transact business on behalf of a Company in accordance with authority limits set out in the Finance Manual.

10.3 No litigation

Save for the collection of small debts in the ordinary course and for minor road traffic offences, the Company is not engaged in any suits, actions, legal or arbitration proceedings where the amount claimed is in excess of (E)100,000 or governmental investigations and the Sellers have not received written notice that any such suit, action, legal or arbitration proceedings or governmental investigations are pending or threatened against or by the Company. There is no outstanding judgment, order, decree, award or decision of a court, tribunal, arbitrator or other person in any jurisdiction against the Company or a person for whose acts or defaults the Company may be liable.

10.4 No breach of statutory requirements

So far as the Sellers are aware, the Company has not done or omitted to do anything in breach of any relevant statutory requirement by laws or regulations of the United Kingdom or elsewhere applicable to it or its business where such contravention will have an adverse effect on the continued operation of the business of the Company.

10.5 No restrictions on business

Other than written distribution agreements or agency agreements or dealership agreements or licence agreements in the ordinary course, no part of the business of the Company is carried on under the agreement or consent of a third party nor is there any agreement which restricts the fields or countries in which the Company carries on business.

10.6 Substantial dependence

In the 12 months prior to the date of this Agreement no customer of the Company (including, for this purpose, any person in any way connected with such customer) or supplier to the Company (including, for this purpose, any person in any way connected with such supplier) accounted for more than 5 per cent of the aggregate amount of purchases from or supplies to the Group as a whole.

10.7 Customers and suppliers

- (1) So far as the Sellers are aware, in the 12 months prior to the date of this Agreement, the Group has had no reason to believe that:
- (a) any material customer (that is a customer who accounted for more than 50 refuse collection vehicles (with or without chassis) in relation to Geesink Group BV, its subsidiaries and Geesink Norba Limited or 25 refuse collection vehicles (with or without chassis) in relation to Norba AB and its subsidiaries in each case during any of the seven years prior to the date of this Agreement) has ceased, or in the case of persons who continue to be customers of the Company has indicated that it will cease purchasing refuse collection vehicles (with or without chassis) from the Company; or
 - (b) any material supplier (that is a supplier who accounted for more than 5 per cent of the aggregate amount of supplies to the Group as a whole during the last 12 months or the exclusive supplier of any supplies) has ceased or, in the case of persons who continue to be suppliers of the Company has indicated that it will cease supplying the Company.
- (2) So far as the Sellers are aware, no such customer or supplier is likely, by reason of completion of this Agreement, to cease purchasing from or supplying the Company.

This Warranty 10.7 shall not apply in respect of purchases/supplies which occurred in relation to Norba AB and its Subsidiaries in respect of any period prior to the Completion of the Norba Acquisition Agreement.

- 10.8 Sale or return
The Company has not accepted any liability or obligation to take back any goods, which remains outstanding at the date of this Agreement, the value of which would exceed (E)100,000 in the aggregate.
- 10.9 Customer complaints

Details of all outstanding customer claims, in respect of defective products or alleged defective products made to the Company in the 12 months preceding the date of this Agreement are set out in the Disclosure Letter where the subject of the complaint exceeds (E)45,000.
- 10.10 Trade associations

Details of all trade associations of which the Company is a member are set out in the Disclosure Letter.
11. INTELLECTUAL PROPERTY
- 11.1 Company Intellectual Property

Schedule 2 (Company Intellectual Property) contains a complete and accurate list of all registrations and all applications for registration or grant which are comprised in the Company Intellectual Property.
- 11.2 Company Intellectual Property - Registrations etc

All Company Intellectual Property:
- (a) is vested in or granted to or applied for in the name of a member of the Group;
 - (b) where registered, all such registrations have been maintained by the payment of all applicable fees;

(c) is so far as the Sellers are aware valid and enforceable; and

- (d) insofar as the same consists of registered trade marks, none has remained unused for a continuous period of 5 years as at the date hereof; and
 - (e) so far as the Sellers are aware, nothing else has been done or omitted to be done by a member of the Group which could or might derogate from the validity and enforceability of the Company Intellectual Property.
- 11.3 No notice of infringement

So far as the Sellers are aware, the Company is not now infringing nor has it at any time in the last 6 years infringed the Intellectual Property of any third party. The Company has not received written notice of any infringement allegations. So far as the Sellers are aware, no person is infringing or has infringed during the last 6 years any of the Company Intellectual Property.
- 11.4 No objections

No written notice of opposition, objection or challenge as to the proprietorship or validity of any Company Intellectual Property has been received by the Company.
- 11.5 Express licences to third parties

Copies or details of all express licences granted to third parties by the Company in relation to Company Intellectual Property are set out in the Disclosure Letter.
- 11.6 Express licences from third parties

Copies or details of all express licences of Intellectual Property granted to the Company by third parties, but excluding in any event licences of non-bespoke software, are set out in the Disclosure Letter.
- 11.7 Neither the Company nor any party with which the Company has contracted is in breach of or has breached any licence, sub-licence or assignment granted to or by the Company in respect of any Company Intellectual Property.
- 11.8 Employees/Consultants

There are no outstanding or potential claims against the Company under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under the Patents Act 1977 and no employee is entitled to any award or compensation in respect thereof under the Patents Act 1977. All

Intellectual Property brought into existence by employees of the Company acting in the course of their employment which is currently being used by the Company, is owned by the Company, whether by virtue of express agreements to this effect or by operation of law. No consultant of the Company is claiming to own any Intellectual Property which is used by the Company (other than where the Company has an express licence to use the same).

11.9 Trading name

The Company does not use any corporate, business or trading name other than those set out in the Disclosure Letter.

11.10 Confidential Information

The Company:

- (a) has not divulged and is not obliged to divulge any Confidential Information to any person, other than to its employees for the purpose of carrying on its business or on written terms of confidence entered into in the ordinary course of its business; and
- (b) is not a party to any agreement or subject to any duty which restricts the free use or disclosure by the Company of any of the Confidential Information.

11.11 Data Protection Act

The Company has, if required to do so under the Data Protection Act 1998, duly notified under that Act in respect of all relevant aspects of the business of the Company and has, so far as the Sellers are aware, complied with the data protection principles as set out in that Act.

11.12 IT definitions

In Warranties 11.13 to 11.18:

"Hardware" means all computer hardware, related peripherals and equipment and apparatus, in each case, owned or used by the Company and necessary in all material respects for the continued operation of the business of the Group in substantially the same manner as carried on at the date of this Agreement;

"Owned Software" means all Software in which the Company owns Intellectual Property;

"Software" means all computer programs, whether in object or source code and their associated documentation and preparatory design materials, in each case, owned or used by the Company and necessary in all material respects for the continued operation of the business of the Group in substantially the same manner as carried on at the date of this Agreement; and

"System" means the Hardware and Software.

11.13 Software specifications

So far as the Sellers are aware, all Software conforms in all material respects with its specification;

11.14 Source code

The Company has in its possession and control all source code relating to the Owned Software, or such source code is subject to an escrow agreement. Copies of all software source code escrow agreements to which the Company is a party are disclosed.

11.15 Back-up copies

The Company's procedures for preventing unauthorised access to the System, and for taking and storing on-site and off-site back-up copies of the Software and any data owned or used by the Company are disclosed.

11.16 Maintenance agreements

Copies of all agreements under which the System is maintained and supported, which involve an annual expenditure of (E)5,000 or more are disclosed.

11.17 Material breakdowns etc

During the 12 months prior to the date of this Agreement, the System has operated without any material breakdown or material interruption.

11.18 Viruses etc

So far as the Sellers are aware, reasonable steps have been taken by the Company with a view to avoiding viruses and other extraneously introduced malfunctions infecting the System.

12. CONTRACTS, COMMITMENTS, ETC.

12.1 Material contracts

All the contracts to which the Company is a party were entered into in the ordinary course of business of the Company and were negotiated on an arm's length basis.

12.2 No material breach of contract by Company

So far as the Sellers are aware, each contract to which the Company is now a party is now valid and subsisting and the Sellers are not aware of any subsisting breach of any of them which could lead to a claim for compensation, damages, specific performance or an injunction being made against the Company or which would entitle a third party to call in any monies before the normal due date, which will in any such case materially adversely affect the business of the Company. For the purposes of this paragraph 12.2, the business of the Company shall be deemed to be materially adversely affected if the amount that would otherwise be recoverable arising from an individual breach as aforesaid is (E)100,000 or more.

12.3 No grounds for termination of contract

The Sellers are not aware of the invalidity of or any grounds for rescission, avoidance or repudiation of any agreement or other transaction to which the Company is a party and the Company has not received notice of any intention to terminate any such agreement or repudiate or disclaim any such transaction.

12.4 No default by other contracting parties

So far as the Sellers are aware, no party with whom the Company has entered into any contract or arrangement is in material default of it. For the purposes of this Paragraph 12.4 a material default shall be deemed to be an individual default where the amount that would otherwise be recoverable as a result of that default is (E)100,000 or more.

12.5 No termination as a result of this Agreement

The Company is not a party to any contract which is material to the financial or trading condition of the Group taken as a whole which, by reason of the sale of Shares or any provision of this Agreement, under its express terms thereof gives to any other contracting party the right to terminate such contract.

12.6 No breach as a result of the acquisition

The acquisition of the Shares by the Purchaser or the entry into, compliance with or completion of this Agreement will not:

- (a) result in a breach of, or constitute a default under any order, judgment or decree of any court or agency by which the Company is bound or to which it is subject;
- (b) result in a breach of or constitute a default under any agreement or arrangement (other than agreements or arrangements with customers or suppliers) to which the Company is a party the value of which exceeds (E)100,000 or entitle any person to terminate any such agreement or arrangement or unilaterally amend such agreement or arrangement to the detriment of the Group; or
- (c) so far as the Sellers are aware, cause or be likely to cause any officer or senior employee of the Company to leave his employment.

12.7 Finder's Fee etc.

No person has received or is entitled to receive from the Company any fee or benefit (including (without limitation) any finder's fee, brokerage or commission) or the reimbursement of any expense in connection with this Agreement.

12.8 Onerous contracts

So far as the Sellers are aware, the Company has not accepted any order for the supply of any product to be delivered after 31 March 2001 which, at the date of acceptance of that order, would give rise to any loss against the Company's standard cost after taking account of any penalties for late delivery.

- 12.9 Agency, distributorship, agreements.
- Details of all subsisting material agency, distributorship and franchise agreements are disclosed.
- 12.10 Partnerships and joint ventures
- The Company is not currently and (so far as the Sellers are aware) has never been a member of any partnership, joint venture, consortium or other unincorporated association (other than the trade associations full details of which are set out in the Disclosure Letter) nor (so far as the Sellers are aware) has it agreed to become a member of any such body.
- 12.11 Norba Agreement
- Neither Norba AB nor any of its Subsidiaries have received payment from any third party such that Powell Duffryn (International) Limited would be obliged to make any payment to Partek Cargotec AB in accordance with clause 12.2 of the Norba Agreement, which payment to Partek Cargotec AB remains outstanding.
13. INSURANCE
- 13.1 Policies
- Details of all the material insurance policies in which the Company has an interest are set out in the Disclosure Letter.
- 13.2 Premiums paid

In respect of all of the Company's insurance policies:

- (a) all premiums have been paid up to date;
- (b) all the policies are in full force and effect and will be maintained in full force and effect without alteration up to Completion;
- (c) so far as the Sellers are aware, there are no circumstances which could lead to any liability under any of the policies being avoided or any policy defence raised by the insurers or to any of the policies being revoked or rendered void or voidable;

(d) there are no outstanding claims in excess of (E)42,000 under any of the policies and, so far as the Sellers are aware, there are no circumstances which are likely to give rise to any such claim;

(e) no policy defences have been raised against any claim currently outstanding under such policies notified to the insurers (excluding, for the avoidance of doubt, specified deductibles); and

(f) so far as the Sellers are aware, all incidents likely to give rise to a claim under the Company's insurance policies have been notified to the Company's insurers.

14. CONTRACTS WITH CONNECTED PERSONS

14.1 Related Party

There is not outstanding, and there has not at any time during the last 6 years been outstanding, any contracts, arrangements or understandings to which any member of the Group or their Associates is, or was, a party and in which any member of the Seller's Group or their respective Associates is, or was, interested, other than in respect of the Inter-Company Debt and Inter-Company Loans.

14.2 No significant interest

None of the Sellers nor the directors of the Company or any of their respective Associates has any interest, direct or indirect, in any business which competes with that now carried on by the Company except as registered holder or beneficial owner of less than 3 per cent of any class of securities listed on a recognised investment exchange.

15. EMPLOYEES

15.1 Details of employees

In relation to each employee of the Company there are contained in the Disclosure Letter particulars or copies of:

- (a) any standard form of particulars of employment applicable and issued to employees;

- (b) any written service or employment agreement for employees with a basic salary in excess of (E)75,000;
- (c) his name, age, sex, job title and date of commencement of employment (including any employment with a previous employer which counts as continuous employment for the purposes of any relevant employment legislation in the jurisdiction in which the Company is incorporated);
- (d) his rate of remuneration, bonus and commission, any other material benefit of any kind to which he is entitled or which is regularly provided or made available to him and his period of notice; and
- (e) any collective agreement or official collective bargaining agreement affecting his terms of employment, including disciplinary or grievance procedures and any procedures to be followed in the case of redundancy or dismissal.

15.2 No employee benefits

The Company has no profit-sharing, share option or share incentive schemes or other employee benefit plans in relation to any employee and no collective bargaining agreements or agreements or arrangements with any trade unions or works council established pursuant to the EC Works Council Directive (94/45) relating to the employees or other bodies representing employees except for those agreements currently in place between the Company and AEEU at Llandrisant and with the staff representative body at Ellesmere Port copies of which agreements are contained in the Disclosure Letter.

15.3 All obligations fulfilled

So far as the Sellers are aware, the Company has complied with, discharged and fulfilled all requirements, liabilities and obligations (whether statutory or contractual) in relation to its employees including all relevant legislation and codes of practice under any applicable laws in relation to employment or employees and has paid all relevant social security and national insurance contributions.

15.4 Notice periods

No employee or officer of the Company is entitled to more than three months' notice to terminate his employment or engagement nor to any compensation (other than statutory compensation) on termination of his employment or engagement except as

provided for under mandatory law and/or collective bargaining agreements in the relevant jurisdiction.

15.5 Amounts owed

There are no amounts owing by any of the Company's employees to the Company.

15.6 No claims

No employee or officer or former employee or officer of the Company has notified the Company in writing of any claim (including but not limited to any claim in respect of an industrial accident) or grounds for such a claim against the Company nor, so far as the Sellers are aware, is there any likelihood of or grounds for such a claim being made where such claim or potential claim remains outstanding

15.7 No disputes

The Company is not involved in any industrial dispute nor, so far as the Sellers are aware, is any such dispute threatened or pending.

15.8 Formal recognition

No independent trade union has served or, so far as the Sellers are aware, has indicated any intention to serve a request for formal recognition under the provisions of Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

15.9 Termination of Employment

No current officer or employee of the Company has given or received written notice terminating his employment or engagement or is under notice of dismissal or on maternity leave, paternal leave or long term sick leave.

15.10 No compromise agreements

The Company has not entered into any compromise agreement with any current or former officer or employee under which any payment is or will be due to such officer or employee or to any person or body on his behalf.

15.11 No contracts for service

There are no subsisting contracts (other than service or employment agreements) in favour of any employee, director or officer of the Company, and no subsisting

contracts for the provision by any individual of any consultancy services to the Company.

16. PENSIONS

16.1 Paragraphs 16.2 to 16.16 only apply or refer to pension arrangements

operating in respect of Employees employed in the United Kingdom.

16.2 For the purposes of paragraphs 16.2 to 16.16:

"Employee" means a director or employee or former director or employee of Geesink Norba Limited or Norba Limited;

"Lacre Scheme" means the Lacre PDE Limited Pension Fund & Life Assurance Scheme;

"Norba Scheme" means the Norba Limited Retirement and Death Benefit Scheme by a declaration of trust dated 24 March 2000;

"PD Plan" means the PD Pension Plan established by a trust deed dated 30 March 1949;

"Pension Schemes" means the PD Plan and the Norba Scheme.

16.3 Other than the Pension Schemes and the Lacre Scheme there are not in operation at the date of this Agreement and no proposal has been announced to enter into make or establish a superannuation, pension, life assurance, death benefit scheme or arrangement (whether approved or not) in respect of which either Geesink Norba Limited or Norba Limited has any legally binding liability to contribute or an obligation to any of its Employees or their dependants.

16.4 Details of the Pension Schemes have been disclosed to the Purchasers in the form of true and complete copies of:

- (a) the trust deed and rules or declaration of trust or other such document currently governing the Pension Schemes;
- (b) the current explanatory booklets issued to an Employee who is or may become a member of either of the Pension Schemes;
- (c) the audited accounts of the Pension Schemes for the last scheme year; and

- (d) a list of the Employees who are members of the Pension Schemes together with sufficient data to enable the Purchaser to ascertain their benefit entitlements under the Pension Schemes.
- 16.5 No discretion or power has been exercised under either of the Pension Schemes in respect of an Employee to augment benefits, admit to membership a person who would not otherwise have been eligible for admission to membership, provide a benefit which would not otherwise be provided or pay a contribution which would not otherwise have been paid.
- 16.6 No plan, proposal or intention to amend, discontinue (in whole or in part) or exercise a discretion in relation to either of the Pension Schemes has been communicated to an Employee who is a member of either of the Pension Schemes.
- 16.7 All contributions (including fees, charges and expenses of whatever nature) which are payable by Geesink Norba Limited or Norba Limited under the Pension Schemes and all contributions due from members of the Pension Schemes have been duly made and remitted and Geesink Norba Limited or Norba Limited has fulfilled all its obligations in respect of the Pension Schemes. All employer and member contributions due to the Norba Scheme have been paid to the trustees in accordance with the payments schedule (as required by, and defined in, section 87 of the Pensions Act 1995).
- 16.8 The Pension Schemes are both exempt approved schemes within the meaning of section 592 of the ICTA and the Sellers are not aware of any matter which might give the Inland Revenue reason to withdraw approval.
- 16.9 The PD Plan is a contracted-out scheme within the meaning of the Pension Schemes Act 1993 and is contracted-out on a mixed benefit basis.
- 16.10 The Norba Scheme is a contracted-out scheme within the meaning of the Pension Schemes Act 1993 and is contracted-out on a money-purchase basis. The Norba Scheme is administered in accordance with the contracting-out requirements of the Act.
- 16.11 No undertaking or assurance has been given to any Employee about the continuation of the Pension Schemes or any alteration or exception from their terms or the increase or improvement of benefits or the exercise of any discretion.

16.12 No Employee or former Employee has been:

- (a) excluded from membership of the Pension Schemes; or
- (b) provided with different benefits under the Pension Schemes

because of their sex or because they are or were employed on a part-time basis and no transfer payment has been received from another pension arrangement which provided different benefits for such a reason.

- 16.13 Each benefit (except a refund of contributions) payable under the Norba Scheme on the death of a member of that Scheme or during periods of sickness or disability of the member is, at the date of this Agreement, fully insured under a policy of insurance with an insurance company of good repute.
- 16.14 There is no civil, criminal, arbitration, administrative or other proceeding or dispute (which includes, without limitation, contact with OPRA or OPAS or the Pensions Ombudsman) concerning the Norba Scheme by or against the trustees or administrator of the Norba Scheme or Norba Limited and the Sellers are not aware that any is pending or threatened.
- 16.15 The Norba Scheme complies in all material respects with the requirements of the Pensions Act 1995.
- 16.16 The winding up of the Lacre Scheme has commenced and Geesink Norba Limited has no liability to pay any contributions, fees, charges or expenses of whatsoever nature (including any liability under section 75 of the Pensions Act 1995) in respect of the Lacre Scheme.
- 16.17 Paragraphs 16.17 to 16.20 apply to pension arrangements operating in respect of Employees employed outside the United Kingdom. These provisions do not derogate from any specific provisions concerning non-UK pensions made elsewhere in this agreement.
- 16.18 "Non-UK Pension Arrangements" means any superannuation, pension, life assurance, death benefit scheme or arrangement in respect of any employee or employees of the Company employed outside the United Kingdom (or any former employees of the Company employed outside the United Kingdom) other than state or other mandatory arrangements.

"Contributions" includes any contributions payable in respect of the Non-UK Pension Arrangements together with fees, charges and expenses of whatever nature.

16.19 There is not in operation at the date of this Agreement and no proposal has been announced to enter into make or establish any Non-UK Pension Arrangement other than those arrangements which have been disclosed to the Purchasers in writing.

16.20 All contributions which are payable by the Company to or in respect of the Non-UK Pension Arrangements and all contributions due from employees have been duly made and remitted.

17. TAXATION MATTERS

17.1 Taxation paid

The Company has duly and punctually paid all Taxation which it is or has been liable to pay or account for prior to the date of this Agreement. The Disclosure Letter sets out with specific reference to this paragraph all payments of corporation tax payable by the Company pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 or otherwise within the period of 9 months after Completion.

17.2 The Company has duly and punctually made and filed all returns which ought to have been filed and has given or delivered all notices and accounts and information which on or before the date of this Agreement ought to have been made, given or delivered for the purposes of Taxation or which have been assumed to have been made, given or delivered for the purposes of the Accounts, and all such returns, notices, accounts and information were and will remain at Completion true, complete and accurate in all material respects and none of them is yet to be determined by or is subject to agreement with any Taxing Authority.

17.3 No disputes

There is no material dispute or disagreement outstanding nor so far as the Seller is aware are there any circumstances at the date of this Agreement which may give rise to such dispute or disagreement with any Taxing Authority in respect of the Company.

17.4 No substitution of consideration

The Company has not in the six years ending on the date of this Agreement carried out or been engaged in any transaction or arrangement in respect of which there has been or may be substituted for the consideration given or received by it (including at nil consideration) a different consideration for Taxation purposes.

17.5 Residence

The Company has since its incorporation been resident for the purposes of Taxation in its country of incorporation only and (a) has not been resident in any other jurisdiction for Taxation purposes, (b) has never paid or become liable to pay Taxation on income, profits or gains to any Taxing Authority outside that country of incorporation or become liable to register for the foreign equivalent of VAT outside that country of incorporation and (c) has never traded outside that country of incorporation through a permanent establishment, branch or agency (save for the branches of Geesink BV in Germany, Italy, Spain and France).

17.6 Company registered under VATA

The Company is duly registered for value added tax purposes and has complied with all relevant provisions of VATA and regulations made or notices issued under any legislation relating to VAT.

17.7 Tax Provisions

The provisions or reserves for Taxation in the Consolidated Accounts (other than deferred Taxation) are sufficient (on the basis of the rates of Taxation current at the date thereof) to cover all Taxation for which the Company was at the Balance Sheet Date or may after that date become or have become liable on or in respect of or by reference to any profits gains or income (whether deemed or actual) for any period ended on or before the Balance Sheet Date or in respect of any distribution or transaction made or entered into or deemed to be made or entered into on or before the Balance Sheet Date.

17.8 All payments made by the Company to any person which ought to have been made under deduction of Tax have been so made and the Company has (when required to do so) provided certificates of deduction to such persons and properly accounted to the relevant Taxing Authority in full for all amounts so deducted.

- 17.9 The Company is not and has not within the last six years been the subject of an investigation audit or visit by any Taxing Authority; neither the Sellers nor the Company has at the date hereof been notified that any such investigation audit or visit is planned in the next twelve months.
- 17.10 The Company is not and will not become liable to pay or make reimbursement or indemnity in respect of or corresponding to Taxation in consequence of the failure by any other person to discharge that Taxation or amount within any specified period or otherwise, where such Taxation or amount relates to a profit, income or gain, transaction, event, omission or circumstance arising or deemed to arise in whole or in part prior to Completion.
- 17.11 The Company is not subject to any contractual liability to indemnify any person in respect of Taxation.
- 17.12 The Company has not engaged in or been party to any scheme or arrangement designed wholly or partly for the purpose of avoiding, deferring or reducing Taxation and no scheme or transaction of any nature has been carried out by or proposed in relation to the Company which has given rise or which could give rise to a charge to Taxation.
- 17.13 The Company has not been party to any preordained series of transactions containing one of more steps which have no commercial purpose other than avoiding, deferring or saving tax or the obtaining of a tax advantage.
- 17.14 General
- The execution or completion of this Agreement or any other event since the Balance Sheet Date will not result in any profit or gain being deemed to accrue to the Company for Taxation purposes.
- 17.15 Group Payment
- The Company has not been a party to any group arrangement for payment of liability to Tax.

18. PROPERTIES

- 18.1 Title
- The Properties comprise all the estate or interest of the Company in any land or premises.
- 18.2 Possession of deeds
- The Company has in its possession or under its control all duly stamped deeds and documents which are necessary to prove title to, or right of use of, the Properties.
- 18.3 The Company is in physical possession and actual occupation of the whole of the Properties on an exclusive basis and no right of occupation or enjoyment has been acquired or is in the course of being acquired by any third party or has been granted or agreed to be granted to any third party.
- 18.4 The Company has good title to each of the Properties and so far as the Seller is aware there is nothing which renders the Properties unmarketable.
- 18.5 There are no agreements to give or create any encumbrances over the Properties and the Seller has disclosed in the Disclosure Letter all documents and other matters relevant to ascertaining what encumbrances affect each of the Properties.
- 18.6 None of the Properties nor the Company as owner or occupier thereof enjoys precariously any right, easement or privilege the withdrawal or cessation of which would have a detrimental effect on the use or continued use of any of the Properties for the purpose for which it is now used.
- 18.7 The Company has not received any written notice alleging failure to comply with all applicable statutory and other requirements relating to each of the Properties including requirements relating to planning, development, fire safety and health and safety at work and so far as the Sellers are aware there are no circumstances that might give rise to such notice being given.
- 18.8 The Company has not received any written notice from any lessor, government body or any other person alleging a breach of any of the following:
- (a) the covenants, conditions, restrictions or agreements or other matters subject to which any of the Properties are held;

- (b) the provisions or requirements of any permissions, licences, approvals, by-laws, orders, regulations or other requirements or obligations affecting or likely to affect each of the Properties or its current use;

and, so far as the Sellers are aware, there are no circumstances that might give rise to the right for such persons to give any such notice.

18.9 So far as the Sellers are aware, none of the Properties nor the Company as owner or occupier thereof is affected by any of the following matters:

- (a) any closing order, demolition order or clearance order;
- (b) any enforcement notice;
- (c) any order or proposal either publicly advertised or of which written notice has been received for the compulsory acquisition or requisition of the whole or any part thereof or the modification of any planning permission or the discontinuance of any use or the removal of any building; or
- (d) any agreement with any planning authority, statutory undertaker or privatised utility or other public body or authority restricting the use or development thereof.

18.10 All development of each of the Properties has been carried out in all respects in accordance with the Planning Acts.

18.11 In respect of each of the Properties that are leasehold or held on licences:

- (a) each of the Properties is held under the terms of the lease or licence brief details of which are given in Schedule 6;
- (b) so far as the Sellers are aware, the Company has paid the rent, service charge and any other payment due under the lease or licence in full and duly observed and performed any covenants on the part of the tenant or licensee and the conditions contained in the lease or licence to a material degree; where "material degree" means to a degree where any claim available to the landlord in respect of any particular failure to observe and perform is worth less than 100,000 Euros and the landlord is not able unilaterally to determine the lease or licence as a result of any such failure;

- (c) all licences, consents and approvals required from the landlord or licensor have been obtained and the covenants on the part of the tenant or licensee contained in the licences, consents and approvals have been duly performed and observed;
 - (d) there are no rent review negotiations currently in progress; and
 - (e) there are no unusual items of expenditure expected to be charged via the service charge in any lease or licence.
- 18.12 The Properties are not subject to any outgoings other than business rates and water rates and (in the case of those of the Properties that are leasehold or held on licences) the rent, insurance rent, service charges or licence fees payable under any lease or licence of any of the Properties and all outgoings have been paid and none is disputed.
- 18.13 There are no disputes affecting any of the Properties or their use and so far as the Sellers are aware there are no circumstances that might give rise to any.
- 18.14 There are no properties (other than the Properties) in respect of which the Company has any existing or contingent material liability, whether or not such properties were previously owned or occupied by the Company and including without limitation premises assigned or otherwise disposed of or in respect of which it guaranteed the liabilities of any third party or otherwise; where "material liability" means liability in excess of 100,000 Euros.
- 18.15 The current uses of the Properties are permitted under planning legislation.
- 19. ENVIRONMENT
- 19.1 Compliance

So far as the Sellers are aware, the Company has complied in all material respects with all Environmental Laws at the Properties which are applicable to the conduct of all or any part of the operations of the Company, and the Sellers have not received any material written formal complaint from any court or statutory body with legally enforceable powers in relation to the Environment, alleging any material non compliance with such Environmental Laws.

- 19.2 So far as the Sellers are aware, there are no current circumstances that cause the Sellers to be in breach of any of the Environmental Laws or would cause them to be in breach were they to remain the owner of the Company.
- 19.3 So far as the Sellers are aware, there are no current circumstances affecting the Company that justify the imposition of any requirement by a competent authority in accordance with such authority's powers and obligations under the Environmental Laws which would if the requirement were not complied with result in there being a breach of Environmental Laws.
- 19.4 There are no past nor have the Sellers received any written notice of any pending or threatened, proceedings or claims against the Sellers brought under the Environmental Laws before any court, arbitrator or other competent body.
- 19.5 All necessary Environmental Permits required for the lawful and safe conduct of the business of the Company as carried out at the date of this Agreement have been obtained and maintained (including the meeting of any obligation to make payment in respect of the grant or subsistence of the Environmental Permits) by the Sellers. So far as the Sellers are aware, all conditions, restrictions and obligations contained in the Environmental Permits have been complied with and, so far as the Sellers are aware, there is no reason why any such Environmental Permits should be or may be revoked or amended.
- 19.6 No part of the Properties has been designated contaminated land within the meaning of section 57 of the Environment Act 1995 (or analogous legislation outside the United Kingdom) nor so far as the Sellers are

aware:

(a) would any part of the Properties be so designated; nor

(b) is any part of the Properties otherwise contaminated to any material degree (whether by the deposit, spillage or disposal or leaching of any hazardous or toxic material, or other pollutant or otherwise) and, so far as the Sellers are aware, as a result of any such contamination no part of the Properties represents a hazard to health or to the Environment assuming neither the Properties (nor any part of them) are developed or otherwise put to use in ways differing from the current operations carried out on the Properties.

- 19.7 So far as the Sellers are aware:
- (a) there are no circumstances which will give rise or have in the past given rise to any liability (whether under statute or at common law) in nuisance in respect of the Properties or the operation of the business of the Company; and
 - (b) the carrying on of the business of the Company has not interfered in any way with the extraction and use of ground water from aquifers.
- 19.8 So far as the Sellers are aware, no third party (including (without limitation) any previous owners of any part of the Properties) has committed any act which has resulted in any liability under Environmental Laws or under common law being incurred by that third party in respect of nuisance caused in relation to the Properties or the business of the Company.
- 19.9 The condition of the soil and groundwater at any of the Properties does not at the present time adversely affect the ability of the Company to carry on its business.
20. HEALTH & SAFETY
- 20.1 So far as the Seller is aware, the Company has complied in all material respects with all applicable laws, regulations and legally binding and approved codes of practice made or issued by national or local government or by any regulatory body or by any court in each case with legally enforceable powers relating to the prevention of accidents and of injury to employees and to lawful and unlawful visitors to the Properties that are in existence at the date of this Agreement and are legally enforceable ("the Health and Safety Laws") both in respect of the activities undertaken at the date of this Agreement at the Properties and in respect of the Properties themselves at the date of this Agreement. For the purposes of this Paragraph 20.1 the Company shall be deemed not to have complied in a material respect with a particular Health and Safety Law if the amount that would otherwise be recoverable arising from that instance of non-compliance is (E)100,000 or more.
- 20.2 So far as the Sellers are aware, there are no outstanding prohibitions and/or improvement notices under the Health and Safety Laws affecting the Company, nor have there been in the past, and so far as the Sellers are aware there are currently no pending, proceedings against the Company under the Health and Safety Laws which have had or which would, with respect to any such pending proceedings, necessarily

in the event of a judgement, decision or order being unfavourable to the Company, adversely affect the financial or trading position of the Company.

- 20.3 There is in force a health and safety policy and, where appropriate, risk assessments, relating to the activities of the Company at each of the Properties which has been communicated to the employees and which are reviewed from time to time and which comply with the requirements of the Health and Safety Laws.
21. COMPETITION
- 21.1 So far as the Sellers are aware, the Company is not and has not been directly or indirectly concerned in or a party to any agreement, arrangement, transaction or practice or pursued any course of conduct or done or omitted to do any act or thing which is :
- (a) capable of giving rise to an investigation by the Director General of Fair Trading under the Competition Act 1998 or the Fair Trading Act 1973 or a reference to the Competition Commission under the Fair Trading Act 1973;
 - (b) in breach of any provision of the EC Treaty, the Fair Trading Act 1973, the Competition Act 1998, or any other competition or anti-trust law or legislation applicable in the United Kingdom or any other jurisdiction in which the Company carries on business; or
 - (c) required to be filed with or notified to any person, or which is unenforceable or void or renders the Company or any of its officers or employees liable to administrative, civil or criminal proceedings, under any competition or anti-trust legislation applicable in the United Kingdom or any other jurisdiction in which the Company carries on business.

Part 2 - Dutch Warranties

1. TAXATION MATTERS

1.1 Geesink Group B.V. and its Dutch Subsidiaries are joint in the fiscal unity Powell Duffryn Holdings B.V. for corporate tax purposes and no liability for tax will arise for the period the Geesink Group B.V. and the Dutch Subsidiaries are included in the fiscal unity Powell Duffryn Holdings B.V., as a result of Geesink Group B.V. ceasing to form part of that fiscal unity as a result of the sale of the Shares in Geesink Group B.V. pursuant to this Agreement. Neither Geesink Group B.V. nor any of the Dutch Subsidiaries will be held liable pursuant to article 39 of the Collection Act ("Invorderingswet") for any liability to tax of Powell Duffryn Holdings B.V.

1.2 No asset, for which an investment premium or any other premium has been claimed in The Netherlands, has been disposed of by Geesink Group B.V. or any of the Dutch Subsidiaries.

1.3 The companies that have formed part of the fiscal unity of Powell Duffryn Holdings B.V. for Dutch corporate income tax purposes (Vennootschapsbelasting) have each fully duly and timely paid to Geesink Group B.V., Geesink B.V. or Powell Duffryn Holdings B.V., the corporate income taxes due on their share of the taxable profits up to the Completion Date that have been or will be taxed on fiscal unity level.

1.4 Neither Geesink Group B.V. nor any of the Dutch Subsidiaries has received a notice under section 49 of the Collection Act 1990.

1.5 Neither Geesink Group B.V. nor any of the Dutch Subsidiaries have contracted or for Dutch corporate income tax purposes will be deemed to have contracted one or more loans of which the interest charges have not been or will not be deductible for Dutch corporate income tax purposes.

1.6 The corporate income tax returns for the financial years 1999/2000 and 2000/2001 of the fiscal unity, to which Geesink Group B.V. and the Dutch Subsidiaries belonged, will be prepared on a basis which is consistent ("volgens een bestendige gedragslijn") with the corporate income tax returns filed for the years prior to 1999/2000.

1.7 No Dutch real estate transfer tax or Dutch capital tax is liable or may become liable to be paid by Geesink Group B.V. or any of the Dutch Subsidiaries as a direct result of any reorganisation imposed by the Guarantor or any member of the Guarantor's Group or as a direct result of Completion.

Part 3 - Swedish Warranties

1. SUBSIDIARIES, PARTNERSHIPS ETC.

Norba AB's ownership of shares in the Swedish company Industriellt Utvecklingscentrum i Monstera AB (registration number 556562-5018) does not imply any undertakings, financial or otherwise, of Norba AB. Furthermore, Industriellt Utvecklingscentrum i Monstera AB is not a subsidiary (nor deemed to be a subsidiary in any respect) to Norba AB under Swedish law.

2. INTELLECTUAL PROPERTY

There are no outstanding or potential claims against the Company under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under the Swedish Employee's Inventions Act of 1949 (lag 1949:345 om rätten till arbetstagares uppfinningar), the Swedish Copyright in Literary and Artistic Works Act of 1960 (lag 1960:729 om upphovsrätt till litterära och konstnärliga verk) or the Swedish Design Protection Act of 1970 (monsterskyddslagen 1970:485) and no employee is entitled to any award or compensation in respect thereof under such legislation. All Intellectual Property brought into existence by employees of Norba AB acting in the course of their employment which is currently being used by Norba AB, is owned by Norba AB, whether by virtue of express agreements to this effect or by operation of law. No consultant of Norba AB is claiming to own any Intellectual Property which is used by Norba AB (other than where Norba AB has an express licence to use the same).

3. PERSONAL DATA ACT

So far as the Sellers are aware, Norba AB has to the extent required by the nature of its business complied with all regulations of the Swedish Personal Data Act (personuppgiftslagen 1998:204) and/or the Swedish Data Act (datalagen 1973:289).

Part 4 - Spanish Warranties

1. CORPORATE MATTERS

Compliance with corporate legislation

Geesink BV in respect of its branch in Spain has complied in all respects with the Spanish Commerce Code ("Codigo de Comercio"), Commercial Registry Regulations ("Reglamento del Registro Mercantil") and all returns, particulars, resolutions and other documents required under any such legislation to be delivered on behalf of Geesink BV in respect of its branch in Spain.

2. INTELLECTUAL PROPERTY

2.1 Employees/Consultants

There are no outstanding or potential claims against Geesink BV in respect of its branch in Spain under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under the Spanish Patents Act 1986 and no employee is entitled to any award or compensation in respect thereof under the Spanish Patents Act 1986. All Intellectual Property brought into existence by employees of Geesink BV in respect of its branch in Spain acting in the course of their employment which is currently being used by Geesink BV, is owned by Geesink BV, whether by virtue of express agreements to this effect or by operation of law. No consultant of Geesink BV in respect of its branch in Spain is claiming to own any Intellectual Property which is used by Geesink BV (other than where Geesink BV has an express licence to use the same).

2.2 Data Protection Act

Geesink B.V. in respect of its branch in Spain has, if required to do so under the Spanish Data Protection Act 1999, duly notified under that Act in respect of all relevant aspects of the business of such branch and has, so far as the Sellers are aware, complied with the data protection principles as set out in that Act.

3. TAXATION MATTERS

Geesink B.V. in respect of its branch in Spain is duly registered for value added tax purposes and has complied with all relevant provisions of the Spanish VAT Act and regulations made or notices issued under any legislation relating to VAT.

4. ASSEMBLY OF PRODUCTS

The assembly of products in Spain has not been contracted to any company other than Revol S.A. Geesink BV has not received written notice that Revol S.A. is not up to date with the payment of salaries to its employees, the payment of contributions to the Spanish Social Security System or is not compliant with all relevant health and safety matters.

Part 5 - German Warranties

1. INTELLECTUAL PROPERTY

1.1 Employees/Consultants

There are no outstanding or potential claims against Geesink BV in respect of its branch in Germany under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under the German Copyright Act (Urhebergesetz), the German Employee's Invention Act (Arbeitnehmererfindungsgesetz), the German Registered Designs Act (Geschmacksmustergesetz) or the German Semiconductor Protection Act (Halbleiterschutzgesetz) and no employee is entitled to any award or compensation in respect thereof under such legislation. All Intellectual Property brought into existence by employees of Geesink BV in respect of its branch in Germany acting in the course of their employment which is currently being used by Geesink BV, is owned by Geesink BV, whether by virtue of express agreements to this effect or by operation of law. No consultant of Geesink BV in respect of its branch in Germany is claiming to own any Intellectual Property which is used by Geesink BV (other than where Geesink BV has an express licence to use the same).

1.2 Data Protection Act

The Company has, so far as the Sellers are aware, complied with the German Data Protection Act (Bundesdatenschutzgesetz).

Part 6 - French Warranties

1. INTELLECTUAL PROPERTY

1.1 Employees/Consultants

There are no outstanding or potential claims against Geesink BV in respect of its branch in France under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under L677-7 et seq of the French Intellectual Property Code and no employee is entitled to any award or compensation in respect thereof under L677-7 et seq of the French Intellectual Property Code. All Intellectual Property brought into existence by employees of Geesink BV in respect of its branch in France acting in the course of their employment which is currently being used by Geesink BV, is owned by Geesink BV, whether by virtue of express agreements to this effect or by operation of law. No consultant of Geesink BV in respect of its branch in France is claiming to own any Intellectual Property which is used by Geesink BV (other than where Geesink BV has an express licence to use the same).

1.2 Data Protection Act

Geesink B.V. in respect of its branch in France has, if required to do so under French Law number 78-17 of 6 January 1978, duly notified under that Law in respect of all relevant aspects of the business of Geesink B.V. in respect of its branch in France and has, so far as the Sellers are aware, complied with the data protection principles as set out in that Law.

2. EMPLOYEES

In respect of the branch of Geesink B.V. in France, no independent trade union has served or, so far as the Sellers are aware, has indicated any intention to serve a request for formal recognition under the provisions of Art L 412 et seq of the French Labour Code.

3. TAXATION MATTERS

Geesink B.V. in respect of its branch in France is duly registered for value added tax purposes and has complied with all relevant provisions of the French General Tax Code and regulations made or notices issued under any legislation relating to VAT.

4. COMPETITION

So far as the Sellers are aware, the Company is not and has not been directly or indirectly concerned in or a party to any agreement, arrangement, transaction or practice or pursued any course of conduct or done or omitted to do any act or thing which is registrable under or capable of giving rise to an investigation by the French equivalent of the Director General of Fair Trading under Book IV of the French Commercial Code.

1. INTELLECTUAL PROPERTY

1.1 Employees/Consultants

There are no outstanding or potential claims against Geesink BV in respect of its branch in Italy under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under article 23 of Italian Law no 1127 of 29 June 1939, as subsequently amended (the "Italian Patent Law") and no employee is entitled to any award or compensation in respect thereof under article 23 of the Italian Patent Law. All Intellectual Property brought into existence by employees of Geesink BV in respect of its branch in Italy acting in the course of their employment which is currently being used by Geesink BV, is owned by Geesink BV, whether by virtue of express agreements to this effect or by operation of law. No consultant of Geesink BV in respect of its branch in Italy is claiming to own any Intellectual Property which is used by Geesink BV (other than where Geesink BV has an express licence to use the same).

1.2 Data Protection Act

Geesink B.V. in respect of its branch in Italy has, if required to do so under Italian Law no 675 of 31 December 1996, duly notified under that Law in respect of all relevant aspects of the business of Geesink B.V. in respect of its branch in Italy and has, so far as the Sellers are aware, complied with the data protection principles as set out in that Law.

2. TAXATION MATTERS

Geesink B.V. in respect of its branch in Italy is duly registered for value added tax purposes and has complied with all relevant provisions of the Italian Legislative Decree no 633 of 26 October 1972, as subsequently amended.

3. COMPETITION

So far as the Sellers are aware, the Company is not and has not been directly or indirectly concerned in or a party to any agreement, arrangement, transaction or practice or pursued any course of conduct or done or omitted to do any act or thing which is registrable under or capable of giving rise to an investigation by the Autorita

4. INSOLVENCY

Geesink BV, in respect of its branch in Italy, is not insolvent or unable to pay its debts in accordance with article 5 of Law no. 267 of March 16, 1942 as subsequently amended (the "Bankruptcy Law"), no petition for bankruptcy or other bankruptcy related procedure has been filed under the Bankruptcy Law and the branch has not been admitted to bankruptcy or other related procedure under the Bankruptcy Law.

Part 8 - Danish Warranties

1. INSOLVENCY

1.1 No winding-up petition

No order has been made or petition presented or resolution passed for the winding up of Norba A/S or for an administration order in respect of Norba A/S nor has any distress execution or other process been levied on any of its assets nor has it stopped payment nor is it insolvent or unable to pay its debts for the purposes of Section 17, paragraph 2 of the Danish Bankruptcy Act (Konkurslov, as amended).

2. INTELLECTUAL PROPERTY

There are no outstanding or potential claims against Norba A/S under any contract or under any of the Danish provisions of law or regulations, relating to the employee compensation for inventions made in work, and no employee is entitled to any award or compensation in respect thereof.

3. PERSONAL DATA PROTECTION ACT

So far as the Sellers are aware, Norba A/S has in its line of business complied with all provisions of the Danish Personal Data Protection Act of 2000 (Personoplysningslov 2000 249).

4. FORMAL RECOGNITION

In respect of Norba A/S, no independent trade union has served or, so far as the Sellers are aware, has indicated any intention to serve a request for formal recognition under the provisions of Collective Bargaining Agreement (Hovedaftale).

5. TAXATION MATTERS

Norba A/S is duly registered for value added tax purposes and has complied with all relevant provisions of the Danish Value Added Tax Act (Momsloven, as amended) and regulations made or notices issued under any legislation relating to VAT.

6. COMPETITION

So far as the Sellers are aware, Norba A/S is not and has not been directly or indirectly concerned in or a party to any agreement, arrangement, transaction or practice or pursued any course of conduct or done or omitted to do any act or thing which is registrable or capable of giving rise to an investigation by the Danish Competition Authority under the Danish Competition Act (Konkurrencelov).

Part 9 - Polish Warranties

1. SHARES AND SHARE CAPITAL

1.1 Transactions at an undervalue

None of the shares in Geesink sp.zo.o was, or represents assets which were, the subject of a transfer at an undervalue (within the meaning of the Polish Act of 15 September 2000 on the Code of Commercial Partnerships and Companies, the Regulation by the President of the Republic of Poland of 24 October 1934 on the bankruptcy law, and the Regulation of the President of the Republic of Poland of 24 October 1934 on the Arrangement Proceedings Law (as amended, as well as any relevant decrees, ordinances and regulations)) or any other transaction capable of being set aside or varied under any insolvency laws within the past five years.

2. INSOLVENCY

2.1 No winding up petition

No order has been made or petition presented or resolution passed for the winding up of Geesink sp.zo.o or for an administration order in respect of Geesink sp.zo.o nor has any distress execution or other process been levied on any of its assets nor has it stopped payment nor is it insolvent or unable to pay its debts for the purposes of the Act of 15 September 2000 on the Code of Commercial Partnerships and Companies, or the regulation by the President of the Republic of Poland on 24 October 1934 on the bankruptcy law (as amended, or any other relevant decrees, ordinances or regulations).

2.2 No arrangements

Geesink sp.zo.o has not at any time been a party to or subject to or applied for:

(a) the sanctioning under the Act of 15 September 2000 on the Code of Commercial Partnerships and companies, the Regulation by the President of the Republic of Poland of 24 October 1934 on the bankruptcy law, the Regulation of the President of the Republic of Poland of 24 October 1934 on Arrangement Proceedings Law (all as amended, as well as any relevant decrees, ordinances and regulations) of a compromise or arrangement between it and any such persons as are mentioned in these laws or the making of any other compromise with its creditors; or

(b) the appointment of any receiver (including an administrative receiver as defined in the Act of 15 September 2000 on the Code of Commercial Partnerships and Companies, the Regulation by the Republic of Poland of 24 October 1934 on the bankruptcy law, the Regulation by the Republic of Poland of 24 October 1934 on Arrangement proceedings Law (all as amended, as well as any relevant decrees, ordinances and regulations)) over all or any or any part of its property or assets.

3. INTELLECTUAL PROPERTY

3.1 Employees/Consultants

There are no outstanding or potential claims against Geesink sp.zo.o under any contract relating to employee compensation for inventions, or under the provisions relating to employee compensation under the Polish Act of 4 February 1994 on Copyright and Neighbouring Rights and the copyright and patents provisions of the Polish Act of 23 April 1964 (the Civil Code) (as amended, as well as any relevant decrees, ordinances and regulations) and no employee is entitled to any award or compensation in respect thereof under such legislation. All Intellectual Property brought into existence by employees of Geesink sp.zo.o acting in the course of their employment which is currently being used by Geesink sp.zo.o, is owned by Geesink sp.zo.o, whether by virtue of express agreements to this effect or by operation of law. No consultant of Geesink sp.zo.o is claiming to own any Intellectual Property which is used by Geesink sp.zo.o (other than where Geesink sp.zo.o has an express licence to use the same).

3.2 Data Protection Act

Geesink sp.zo.o has, if required to do so under the Polish Act of 29 August 1997 on the Protection of Personal Data (as amended, or any other relevant decrees, ordinances and regulations), duly notified under that Act in respect of all relevant aspects of the business of the Company and has, so far as the Sellers are aware, complied with the data protection principles as set out in that Act.

4. EMPLOYEES

In respect of Geesink sp.zo.o, no independent trade union has served or, so far as the Sellers are aware, has indicated any intention to serve a request for formal recognition under the provisions of the Polish Act of 26 June 1974: the Polish Labour Code and the Polish Law of 23 May 1991 on Trade Unions (as amended, as well as any relevant decrees, ordinances and regulations).

5. TAXATION MATTERS

Geesink sp.zo.o is duly registered for value added tax purposes and has complied with all relevant provisions of the Polish Act of 8 January 1993 on Goods and Services Tax and Excise Duty (as amended, as well as any relevant decrees, ordinances and regulations) and regulations made or notices issued under any legislation relating to VAT.

6. COMPETITION

So far as the Sellers are aware, Geesink Sp.z o.o is not and has not been directly or indirectly concerned in or a party to any agreement, arrangement, transaction or practice or pursued any course of conduct or done or omitted to do any act or thing which is registrable under or capable of giving rise to an investigation under the Polish Act of 15 December 2000 on the Protection of Competition and Consumers, the anti-competitive provisions of the Polish Act of 23 April 1964 (the Civil Code) and the Polish Act of 16 April 1993 on Suppression of Unfair Competition (as amended, as well as any relevant decrees, ordinances and regulations).

SCHEDULE 5

LIMITATIONS ON CLAIMS

1. PURCHASERS TO NOTIFY POTENTIAL CLAIMS

1.1 If the Purchasers, the Companies, the Subsidiaries or any of them becomes aware of any fact, matter, event or circumstance by virtue of which the Sellers are or are reasonably likely to become liable to make any payment under any of the Warranties or any other provision of this Agreement the Purchasers shall as soon as practicable after becoming aware (and in any event in relation to claims under Paragraph 17 (Taxation) of Part 1 of Schedule 4 (Warranties) and the Environmental Warranties within 10 Business Days and in respect of all other claims within 30 Business Days) notify the Sellers in writing specifying in reasonable detail the fact, matter, event or circumstance giving rise (or which is reasonably likely to give rise) to that liability and giving an estimate (if reasonably practicable) of the amount which may be claimed against the Sellers in respect of that liability. Notification pursuant to the terms of this Clause shall not be a condition of the Sellers' liability.

1.2 For the purposes of Paragraph 1.1 above, the Purchasers, the Companies, the Subsidiaries or any of them shall be deemed to have become aware of any fact, matter, event or circumstance when:

(a) in the case of a fact, matter, event or circumstance relating to the Environmental Warranties, any of the general counsel, the chief financial officer or the director of environmental affairs (or relevant equivalent) from time to time of the Purchasers' Guarantor (being for the time being Timothy Dempsey, Charles Szews and Don Draxler respectively) or the managing director (or relevant equivalent) of the Group from time to time (being for the time being Gijs Spruit) or any manager at any Property from time to time with day to day responsibility for environmental affairs; and

(b) in all other cases, any of the general counsel, the chief financial officer or the chief executive officer (or relevant equivalent) of the Purchasers' Guarantor from time to time (being for the time being Timothy Dempsey, Charles Szews and Robert Bohn respectively) or the managing director (or relevant equivalent) of the Group from time to time (being for the time being Gijs Spruit), become actually aware of the same.

2. TIME LIMIT ON CLAIMS

2.1 No claim shall be brought by the Purchasers under the Warranties or the Tax Deed unless they shall have given notice in writing of that claim specifying (in reasonably sufficient detail) the matter giving rise to the claim, the nature of the claim and so far as practicable the amount claimed (with a breakdown of the aggregate loss alleged to have been suffered if possible) to the Sellers not later than:

(a) in the case of a claim relating to Taxation in respect of a Company or Subsidiary, the expiry of a period commencing on the Completion Date and ending one year after the expiry of the relevant statutory limitation period relating to Taxation in the jurisdiction in which the relevant Company or Subsidiary (which is the subject of the claim under this Agreement or the Tax Deed) is resident for Tax Purposes;

(b) in the case of a claim relating to the Environmental Warranties the expiry of a period of:

(i) in respect of any Disclosed Environmental Matter dealing with contamination of the soil and/or groundwater at the Norba AB Properties, the expiry of a period of seven (7) years, commencing on the Completion Date;

(ii) in respect of all other claims, the expiry of a period of three (3) years, commencing on the Completion Date;

(c) in the case of a claim under Paragraph 21 (Competition) of Part 1 of Schedule 4 (Warranties), the expiry of a period of three years commencing on the Completion Date; and

(d) in any other case, 31 March 2003.

2.2 The liability of the Sellers in respect of a claim notified in accordance with Paragraph 2.1 (Time Limit on Claims) (other than under the Tax Deed) shall absolutely terminate (if that claim has not been previously satisfied, settled or withdrawn) if legal proceedings in respect of that claim containing full particulars of it shall not have been properly issued and validly served on the Sellers within nine (9) months after the date of service of that notice.

3. SPECIFIC LIMITATIONS

The Purchasers shall not be entitled to claim against the Sellers:

(a) with respect to a claim under the Warranties, save in relation to any of the Warranties set out in Paragraphs 2 (Shares and Share Capital), 17 (Taxation Matters), 19 (Environment) and 21 (Competition) and 12.11 (Norba Agreement) only of Part 1 of Schedule 4 (Warranties), unless the amount (excluding interest and costs) that would be recoverable from the Sellers in respect of the claim exceeds (E)100,000 (one hundred thousand euros). For this purpose, if a claim relates to more than one event or circumstance which would separately constitute a breach of any of the Warranties or any other provision of this Agreement that claim shall be treated as a separate claim in respect of each event or circumstance;

(b) with respect to a claim under the Warranties, save in relation to any of the Warranties set out in Paragraphs 2 (Shares and Share Capital), 17 (Taxation Matters), 19 (Environment) and 21 (Competition) and 12.11 (Norba Agreement) only of Part 1 of Schedule 4 (Warranties), until the amount (excluding interest and costs) that would be recoverable from the Sellers in respect of the claim, when aggregated with the amount (excluding interest and costs) recoverable in respect of any other claims against the Sellers under the Warranties or any other provision of this Agreement (and for those purposes ignoring any claims which the Purchasers are not entitled to bring because of paragraph 3(a) (Specific Limitations) above) exceeds a threshold of (E)5,000,000 (five million euros) in which event, the Sellers' liability shall be for the whole of such amount and not just the amount by which that threshold is exceeded;

(c) with respect to a claim under the Environmental Warranties relating to all Disclosed Environmental Matters unless and until the aggregated amount (excluding interest and costs) that would be recoverable from the Sellers in respect of any claim or claims exceeds a threshold of (E) 2,200,000 (two million two hundred thousand euros) in which event the Sellers' liability shall be limited to the amount by which the threshold is exceeded. (For this purpose it shall be assumed that the Disclosed Environmental Matters have not been disclosed to the Purchaser and that the Purchaser had not taken into account any Losses they may incur as a consequence thereof in agreeing the Purchase Price ;

(d) with respect to a claim under the Environmental Warranties relating to any Undisclosed Environmental Matter unless the amount (excluding interest and costs) that would be recoverable from the Sellers in respect of the claim

exceeds (E)10,000 (ten thousand euros). For this purpose if a claim relates to more than one event or circumstance which would separately constitute a breach of any of the Environmental Warranties or any other provision of this Agreement that claim shall be treated as a separate claim in respect of each event or circumstance;

(e) with respect to any claim under the Environmental Warranties relating to Undisclosed Environmental Matters unless and until the amount (excluding interest and costs) that would be recoverable from the Sellers in respect of the claim, when aggregated with the amount (excluding interest and costs) recoverable in respect of any other such claims against the Sellers (and for this purpose ignoring any claims which the Purchasers are not entitled to bring because of paragraph 3(d) (Specific Limitations) above) exceeds a threshold of (E)100,000 (one hundred thousand euros) in which event the Sellers' liability shall be for the whole of such amount and not just the amount by which that threshold is exceeded;

(f) with respect to a claim under the Warranties, in respect of any matters disclosed or referred to in this Agreement (or arising from implementation of the same) or fairly disclosed in the Disclosure Letter or otherwise actually known to Robert Bohn, Timothy Dempsey, Charles Szews, David Sagehorn or Tom Olson before the date of this Agreement. The contents of the Norba Acquisition Agreement, the schedules to the Norba Acquisition Agreement for the purposes of this Agreement, be deemed to be fairly disclosed in the Disclosure Letter;

(g) with respect to a claim under the Warranties or any other provision of this Agreement, in respect of any matter or thing after the date of this Agreement done or omitted to be done at the written request of or with the written consent of the Purchasers, the Companies, the Subsidiaries or any of them or any other member of the Purchasers' Group and the Purchasers knew that the effect of such action or omission would be to give rise to a breach of the Warranties or any other provision of this Agreement;

(h) if and to the extent that:

(i) with respect to a claim under the Warranties, the claim would not have arisen but for any act, omission, transaction or arrangement (or any combination of any of the same) after Completion of the Purchasers, the Companies the Subsidiaries or any of them or any member of the

Purchasers' Group or any successor in title to the Shares or their respective directors, employees or agents other than acts, omissions, transactions or arrangements in the ordinary course of business, or pursuant to any legal or regulatory requirement;

(ii) with respect to a claim under the Warranties, the claim would not have arisen but for any change in the accounting policy or practice of the Companies, the Subsidiaries or any of them having effect after Completion except where such change is reasonably necessary to enable the Company, the Subsidiaries or any of them to comply with generally accepted accounting principles at the date of Completion in the place of incorporation of that Company or Subsidiary;

(iii) with respect to a claim under the Warranties, the claim arises or is increased as a result of the passing of, or any change in or any change in the interpretation of, any law, rule, regulation or administrative practice of any government, government department, local or state agency, authority regulatory or fiscal body after the date the relevant Warranties are given;

(iv) with respect to a claim under the Warranties or any other provision of this Agreement, the claim arises or is increased as a result of the Purchasers, the Companies, the Subsidiaries or any of them not complying with its obligations under this Agreement (including, without limitation, the provision of paragraph 1 of this Schedule 5);

(v) with respect to a claim under the Warranties or any other provision of this Agreement to the extent the damage, liability or loss suffered or incurred by the Purchasers, the Companies, the Subsidiaries or any of them has been made good or has been otherwise compensated for without cost to the Purchasers, the Companies, the Subsidiaries or any of them;

(vi) with respect to a claim under the Warranties, specific provision is made in the Consolidated Accounts or the Management Accounts for the matter, fact, event or the circumstance which would otherwise give rise to a claim. For the avoidance of doubt, specific provisions for the purposes of this Paragraph 3(h)(vi) shall not be limited to provisions designated as "Specific Provisions" in the Consolidated Accounts or the Management Accounts;

(vii) with respect to a claim relating to Taxation under the Warranties or any other provision of this Agreement, there are losses, reliefs or allowances arising on or before the Balance Sheet Date (other than any loss, relief or allowance which is treated as an asset in the Consolidated Accounts or which has been taken into account in computing Taxation or deferred Taxation in the Consolidated Accounts) in the Companies, the Subsidiaries or any of them which are available (whether by surrender or otherwise) at the date of claim to be set off against the loss giving rise to the claim;

(viii) with respect to a claim under the Warranties (other than in relation to any of the Warranties set out in Paragraph 17 of Part 1 of the Warranties relating to Taxation) or any other provision of this Agreement, any amount by which any Taxation for which the Companies, the Subsidiaries or any of them is liable is actually reduced or extinguished as a consequence of a payment in respect of the matter giving rise to a claim under the Warranties. For this purpose the Taxation shall be treated as having been actually reduced or extinguished when either:

(aa) payment of Taxation is made by the Companies, the Subsidiaries or any of them of a lesser amount than would otherwise have been the case; or

(bb) no payment is made which would otherwise have been payable,

in either case as a result of the Companies, the Subsidiaries or any of them obtaining a deduction in respect of that payment in computing its profits or gains for Tax purposes or in computing the amount of any loss incurred in a trade or the amount of any capital loss where such loss is set against other taxable profits or gains of the Companies, the Subsidiaries or any of them in respect of which Tax would otherwise have been payable.

As and when the actual reduction or extinction occurs this paragraph 3(h)(viii) (Specific Limitations) shall operate first so as to require the Purchasers to account to the Sellers for any payment previously so made by it to the extent that the payment would not have been made had that actual reduction or extinction then occurred and after that to

reduce pro tanto any further liability of the Sellers under the Warranties or any other provision of this Agreement;

(ix) with respect to a claim under the Environmental Warranties the claim arises as a result of the Purchasers or, following Completion, any member of the Group, their employees (other than manual and clerical workers) or agents:

(aa) making or causing or permitting any person to make any admission or providing or causing or permitting to be provided by any person any information, in each case voluntarily, to any competent authority in the absence of any legal obligation to that competent authority to make such admission or provide such information; or

(bb) otherwise exacerbating, increasing or aggravating any environmental condition in existence at or prior to Completion except to the extent that a Reasonable and Prudent Operator would exacerbate, increase or aggravate any such environmental condition and provided that in relation to any Undisclosed Environmental Matters, no such limitation shall apply until any member of the management team of the Purchasers, the Companies, the Subsidiaries or any of them or any of those persons specified in Paragraph 1.2(a) of this Schedule 5, including in relation to the United Kingdom, John Clowes or, in relation to Sweden, Johan Biskop, become aware after Completion of the environmental condition in question (of which he was unaware prior to Completion); or

(cc) taking any steps which crystallise or increase any loss or liability, except to the extent that a Reasonable and Prudent Operator would take any such steps which shall include, without limitation, intrusive investigations in relation to the sale or leasing of any Property or any requirements of any lenders or other participants in any financing secured on any Property or the carrying out of any intrusive investigations required in connection with any development of the type referred to in the exclusion in Paragraph 3(h)(xii) below) and having due regard to the interests of the Sellers;

- (x) with respect to any claim under the Environmental Warranties, to the extent any claim relates to Losses which are other than Recoverable Environmental Losses;
- (xi) with respect to any claim under the Environmental Warranties, to the extent that any claim relates to Irrecoverable Environmental Losses;
- (xii) with respect to any claim under the Environmental Warranties, to the extent such claim relates to any change of use at or development of any Property (excluding any reasonable development in the ordinary course of the business of the Companies at the Property carried on as at Completion) or the carrying out of any change of process except where connected with such reasonable development as aforesaid, in each case after Completion; and
- (i) with respect to a claim under the Warranties set out in Paragraph 17 (Taxation) of Part 1 of the Warranties, to the extent that the provisions of Clause 4 of the Tax Deed apply.

4. MAXIMUM LIABILITY

The aggregate liability of the Sellers in respect of claims under the Warranties or any other provision of this Agreement and the Tax Deed (save where expressly provided otherwise in the Tax Deed) shall not exceed the Purchase Price (including all legal, accountancy, professional and any other costs, fees and expenses incurred by the Purchasers, the Companies and the Subsidiaries or any of them in seeking to enforce their respective rights in respect of the matters giving rise to those claims) provided that this cap shall not apply in respect of claims brought under Clause 2 (Agreement to Sell and Purchase).

5. NO DOUBLE RECOVERY

The Purchasers shall not be entitled to recover more than once for the same loss in respect of any fact, matter, event or circumstance giving rise to a claim under Clause 11 (Specific Indemnities), the Warranties, the Tax Deed or any other provision of this Agreement.

6. RECOVERY FROM THIRD PARTIES

6.1 If the Purchasers, the Companies, the Subsidiaries or any of them is or may be entitled to recover from some other person (including insurers but excluding any member of

the Group) any loss or damage which gives rise to any claim under the Warranties or any other provision of this Agreement, the Purchasers shall or shall procure that the Company or the relevant Subsidiary shall take all appropriate steps to enforce that recovery (keeping the Sellers informed on a timely basis of any action so taken) before taking any action (other than notifying the Sellers of the claim) against the Sellers, provided that such steps will not, or are not likely, (in each case, in the reasonable opinion of the Purchasers) to materially adversely affect the goodwill of any member of the Group save that this proviso shall not apply in relation to the recovery by the Companies and the Subsidiaries of debts owed to them by customers, in respect of which the Purchasers shall procure that the Companies and the Subsidiaries shall seek to recover the same in the normal and proper course of business and in accordance with the relevant periods for payment.

If the Purchasers, the Companies, the Subsidiaries or any of them do not take the appropriate steps to enforce any such recovery, the Sellers may refer the matter to a Queens' Counsel of at least 20 years call jointly agreed upon between the Purchasers and the Sellers or (failing such agreement) appointed, at the request of either the Purchaser or the Seller at any time, by the President from time to time of the Law Society in England and Wales (the "Queens' Counsel"), who shall then determine whether the goodwill of any member of the Group would be materially adversely affected if the Purchasers, the Companies, the Subsidiaries took the appropriate steps to enforce such recovery. His decision shall be communicated in writing to the Purchasers and the Sellers shall be final and binding upon the Purchaser and the Sellers, save in the event of manifest error. The costs of the Queens Counsel shall be borne as to half by the Sellers and half by the Purchasers in connection with all matters specified in this Paragraph.

6.2 If, notwithstanding any other provision of this Schedule, any payment is made by the Sellers in or towards the settlement of any claim made under the Warranties and the Purchasers, the Companies, the Subsidiaries or any of them subsequently recovers or procures the recovery from a third party (including insurers) of an amount which is directly referable to that claim (and, in the event that the Purchasers, the Companies, the Subsidiaries or any of them becomes entitled after payment by the Sellers to make recovery provided that such steps will not, or are not likely to (in both cases, in the reasonable opinion of the Purchaser) adversely affect the goodwill of any member of the Group, the Purchasers undertake to procure that all necessary steps are taken to enforce that recovery at the cost and expense of the Sellers) the Purchasers shall or shall procure that the relevant Company or Subsidiary shall forthwith repay upon such

recovery to the Sellers an amount equal to the amount (including interest (if any)) recovered from the third party.

7. CONDUCT OF CLAIMS

If the Purchasers, the Companies, the Subsidiaries or any of them or any other member of the Purchasers' Group becomes aware of any actual or threatened assessment, claim, action or demand by a third party against any of them (including without limitation any competent authority in relation to the Environment) (a "third party claim") which causes or is reasonably likely to cause the Sellers to be liable under the Warranties:

(a) the Purchasers shall at the written request of the Seller take or procure that the relevant Company or Subsidiary shall take such action as the Sellers may reasonably require to avoid, contest, dispute, resist, appeal, compromise or defend the third party claim (including, but without limitation, making counter claims and exercising all rights of set off against third parties) provided that the Sellers shall indemnify the Purchasers, and each Company and Subsidiary and all other members of the Purchasers' Group against all costs reasonably incurred by them in complying with their respective obligations under this Paragraph and provided further that such action will not or is not likely to, in both cases, in the reasonable opinion of the Purchasers adversely affect the goodwill of any member of the Group.

(b) the Purchasers will not (and will procure that each Company and Subsidiary and all other members of the Purchasers' Group will not) make or attempt to make any admission of liability, agreement, settlement or compromise in relation to a third party claim without the consent of the Sellers (that consent not to be unreasonably withheld or delayed); and

(c) the Purchasers shall in any event keep the Sellers informed as to the steps which are being taken in connection with the third party claim.

8. DUTY TO MITIGATE

The Purchasers shall and shall procure that the Companies and the Subsidiaries and any other relevant member of the Purchasers' Group shall in relation to any loss or liability which might give rise to a claim under the Warranties against the Sellers (were none of the limitations save this Paragraph 8 to apply) take all reasonable steps to avoid or mitigate that loss or liability.

9. BOOKS AND RECORDS

The Purchasers will (and will procure that each Company and Subsidiary and all other members of the Purchasers' Group will) for such period of time as is commensurate with the time periods set out in paragraph 2.1 of this Schedule 5 retain and preserve all books, records, documents and information (including information recorded or retained in any electronic form) of or relating to each Company and Subsidiary and their business which are or may be relevant in connection with any claim brought by the Purchasers against the Sellers under the Warranties or any other provision of this Agreement for so long as any actual or prospective claims remain outstanding.

10. REMEDIAL ACTION

10.1 For the purposes of this Paragraph 10:

"Environmental Authority" means any governmental agency, court, regulatory or administrative body with jurisdiction in relation to Remedial Action;

"Hazardous Substances" means any poisonous, noxious, dangerous, hazardous, radioactive, toxic, flammable, carcinogenic, corrosive, infectious, mutagenic, teratogenic, irritant or explosive materials or substances or any constituent or any mixture of any of them (including without limitation any petroleum or petroleum-derived substance) and/or any other materials or substances that are regulated under Environmental Laws;

"Remedial Action" means, removing, treating, containing, remedying, encapsulating, cleaning up, abating or ameliorating the presence in or effect on the Environment of any Hazardous Substances but excludes any works to investigate, inspect, assess or audit the presence or effect on the Environment of any Hazardous Substances.

10.2 The Purchasers shall have the conduct of the performance of any Remedial Action.

10.3 In connection with any Remedial Action, the Purchasers shall and shall procure that the Companies and the Subsidiaries and any relevant member of the Purchasers' Group shall co-operate with the Sellers, their employees, contractors and agents and without limiting the generality of the foregoing, the Purchasers shall and shall procure that the Companies and the Subsidiaries and any relevant member of the

Purchasers' Group shall:

(a) provide the Sellers promptly upon issuance or receipt with the following items and information in the possession, custody or control of the Purchasers and/or the Company and/or the Subsidiaries and/or any relevant member of the Purchasers' Group or in the possession, custody or control of their contractors or agents to the extent that such items and information are relevant to the Remedial Action:

(i) all written communications to or from any Environmental Authority or third party;

(ii) all reports arising out of any actual or potential Remedial Action including, but not limited to, any reports assessing the nature or scope of the presence of Hazardous Substances in the Environment to which the actual or potential Remedial Action relates and any results of any sampling;

(iii) any records, documents, data or other information

that may assist the Sellers, their employees, contractors and agents in connection with the Remedial Action;

(b) make its employees available to the Sellers, their employees, contractors and agents to provide information relating to the Remedial Action;

(c) upon reasonable advance notice and during normal business hours, provide the Sellers, their employees, contractors and agents with access to, and permit the Sellers, their employees, contractors and agents and any Environmental Authority, to enter the Properties and any other property owned, leased or controlled by the Purchasers, their Subsidiaries or any member of the Purchasers' Group to view any Remedial Action being undertaken subject to the Sellers, their employees, contractors and agents complying with the reasonable requirements of the Purchasers in terms of discharging their obligations under health and safety legislation;

10.4 In connection with the performance of Remedial Action, the Purchaser shall:

(a) perform, and cause all consultants and contractors, to perform, such Remedial Action in a workmanlike manner and consistent with all applicable Environmental Laws;

- (b) provide the Sellers with reasonable advance notice of any material negotiations, discussions or meetings with any Environmental Authority concerning the relevant Remedial Action; and
 - (c) provide the Sellers with draft copies of work plans or reports (if any) pertaining in any material way to Remedial Action within a reasonable period prior to the implementation of the same.
- 10.5 In relation to any Remedial Action carried out by or on behalf of the Purchasers, the Purchasers shall not make any claim for breach of any of the Environmental Warranties except to the extent that any claim is made only in respect of Recoverable Environmental Losses.
- 11. ENVIRONMENTAL DISCLOSURES BY THE SELLERS
- 11.1 Except as provided for in Paragraph 11.2 below, the Sellers shall not, in relation to any Environmental matter in respect of the Properties, make any contact with, or disclose any information concerning the subject matter (whether orally or in writing) to any competent authority.
- 11.2 The obligation on the Sellers, in Paragraph 11.1 above, not to disclose information shall not apply:
 - (a) where the Sellers have obtained the prior written approval of the Purchasers to such disclosure (such approval not to be unreasonably withheld or delayed); or
 - (b) where the Sellers (or any of them) are subject to a legally enforceable obligation to make any such disclosure; or

(c) in the event of an emergency.

SCHEDULE 6
PROPERTIES
Freehold

(1) Legal Owner	(2) Description	(3) Description land register	(4) Registration No. Ownership title	(5) Occupant
Geesink Vastgoed B.V.	Parcel of land, Betonweg 5, 58305 AG Emmeloord, The Netherlands	Section AZ, number 1649	Register 4, 274, number 41	section
Geesink Vastgoed B.V.	Industrial site with shed, subsoil and other appurtenances, Betonweg 3, 8305 AG Emmeloord, The Netherlands	Section AZ number 3476	Register 4, 818, number 20	section
Geesink Vastgoed B.V.	Parcel of land, Meubelweg 1, 8305 AD Emmeloord, The Netherlands	Section AZ, number 5983	Register 4, 2015, number 37	section
Geesink Vastgoed B.V.	Parcel of building land, corner Machineweg / Meubelweg, Emmeloord, The Netherlands,	Section AZ number 5984	Register 4, 1908, number 36	section
Geesink Vastgoed B.V.	Factory, office, sheds, industrial site, Betonweg 8, 8305 AG Emmeloord, The Netherlands	Section AZ, number 7007	Register 4, 274, number 41	section
Geesink Vastgoed B.V.	Shed and industrial site, Betonweg 6, 8305 AG Emmeloord, The Netherlands	Section AZ, number 7009	Register 4, section 57, number 39	
Geesink Vastgoed B.V.	Road (part of industrial site), Machineweg in Emmeloord, The Netherlands	Section AZ, number 7010	Register 4, section 4883, number 70	
Geesink Vastgoed B.V.	Shed with subsoil and other appurtenances, Constructieweg 10, 8305 AA Emmeloord, The Netherlands	Section AZ, number 7019	Register 4, 124, number 19	section
Geesink Vastgoed B.V.	Factory warehouse with subsoil and other appurtenances, Meubelweg 11, 8305 AD Emmeloord, The Netherlands	Section AZ, number 7020	Register 4, 1601, number 13	section
Geesink Vastgoed B.V.	Factory warehouse with subsoil and other appurtenances, Machineweg 4, 8305 AE Emmeloord, The Netherlands	Section AZ number 7021	Register 4, 102, number 39	section

Geesink Vastgoed B.V.	Parking space, Betonweg 1 Emmeloord, The Netherlands	Section AZ, number 9403	Register 4, 697, number 8	section
Geesink Vastgoed B.V.	Parcel of industrial ground, Constructieweg, Emmeloord, The Netherlands	Section AZ, number 9485	Register 4, 1306, number 26; rectified deed: register 4, section 1548, number 6	
Geesink Vastgoed B.V.	Parcel of industrial ground, Constructieweg, Emmeloord, The Netherlands	Section AZ number 9487	Register 4, 1306, number 26; rectified deed: register 4, section 1548, number 6	
Kiggen Den Engelsman B.V.	Factory and other appurtenances, Den Engelsman 2, 6026 RB Maarheeze, The Netherlands	Section B, number 861	Register 4, 7266, number 64	section
Kiggen Den Engelsman B.V.	Parcel of land, Den Engelsman, Maarheeze, The Netherlands	Section B, number 1029	Register 4, 7266, number 64	section
Kiggen Den Engelsman B.V.	Sheds and land, Den Engelsman, Maarheeze, The Netherlands	Section B, number 1321	Register 4, 9009, number 26	section
Geesink Norba Limited	Llantrisant Business Park, Llantrisant, Pontyclun, Mid Glamorgan, UK		WA 773911	Geesink Norba Limited
Geesink Norba Limited	Acrewood Way, Hatfield Road, St Albans, Hertfordshire, UK		HD 389127	Geesink Norba Limited
Norba A/S	Silovej 40, 2690 Karlslunde, Denmark		Title No. 4-s, Karlstrup by, Karkstrup	Norba A/S
Norba AB	Land for industrial building at Blomstermala, Sweden		Arhult 3:51, Municipality of Monsteraas	Unoccupied

Leasehold

(1)	(2)	(3)	(4)	(5)
Legal Owner	Description	Land Register Description	Title No. or Term/Annual Rent	Occupant
Geesink Vastgoed B.V.	Office building, Betonweg 2, 8305 AG Emmeloord, The Netherlands	Section AZ, number 1705	Leasehold until 2064 NLG 198 p.a.	Geesink Vastgoed BV
Geesink Vastgoed B.V.	Two sheds and land, Betonweg 6, 8305 AG Emmeloord, The Netherlands	Section AZ, number 7008	Leasehold until 2064 NLG 9.351 p.a.	Geesink Vastgoed BV
Geesink Vastgoed B.V.	Parking place chassis, Betonweg 10, 8305 AG Emmeloord, The Netherlands	Section AZ, number 1011	30 September 2000 - 30 September 2005, extension 5 years, NLG 70.000 p.a.	Geesink Vastgoed BV
Geesink B.V.	Bolstoen 5a, 1046 AS, Amsterdam, The Netherlands	Sloten, Section A, number 1489-A-1	1 June 2001 - 31 May 2006, extension every 5 years. NLG 72.500 p.a.	Geesink B.V.
Norba AB	Land and buildings at Blomstermala, Sweden	Arhult 13:114, Municipality of Monsteraas	Term until 31 December 2007	Norba AB
Norba AB	Land and buildings at Blomstermala, Sweden	Arhult 35:1, Municipality of Monsteraas	Original lease term until 31 December 2007. New lease term until 31 August 2004	Norba AB
Norba AB	Land and buildings at Blomstermala, Sweden	Arhult 35:2, Municipality of Monsteraas	50% of total lease terminated 1 June 2001. 50% of total lease to be terminated 1 September 2001.	Norba AB (50%) and Stans & Press i Blomster Mala AB (50%)
Geesink Norba Limited	Unit 25, Moss Lane Industrial Estate, Moss Lane, Royton, Oldham, UK	N/A	15 years from 23 December 1998 (pound)27,000 p.a.	Geesink Norba Limited
Geesink Norba Limited	Unit 10, Farthing Road, Ipswich, England	N/A	5 years from 1 April 2001	Geesink Norba Limited
Geesink Norba Limited	Part of Land, Bagleys Lane Depot, London SW6	N/A	5 years from 1 August 1999	Geesink Norba Limited
Geesink B.V.	13, Rue des Albatros, Z.I. Les Meurieres, 69780 Mions, France	Section AH no. 59	9 years from 1 April 1994, renewed 1 June 1998 FRF 336,000 per annum - EUR 51,223	Geesink B.V.

Geesink B.V.	Warehouse at Z.I. Les Meurieres, 69780 Mions, France	Section AH no. 60	9 years from 1 June 1998	Geesink B.V.
			FF 288,000 p.a. EUR 43,905	
Geesink B.V.	In der Beckuhl 18, 46569 Hunxe, Germany		12 years from 1992	Geesink B.V.
			DM 284,000 p.a.	
Geesink N.V.	Damstraat 195, 1980 Zemst, Belgium		Notice given to terminate lease on 31 October 2001	Geesink N.V.
			BEF 504.000 p.a.	
Geesink Polska Sp.zo.o.	Ul. Partyzancka 94/108, 95-200 Pabianice, Poland		Indefinite term, with 6 month notice period	Geesink Polska Sp.zo.o.
			PLN 32.400 p.a.	
Geesink B.V.	Centor dir. Colleoni, Palazzo Cassiopea, Via Paracelso, 22, 20041 Agrate Brianza (MI), Italy		1 November 2000 to 31 December 2006	Geesink B.V.
			Lira 33,000,000 p.a.	
Geesink B.V.	C/Las Estaciones, 11 Parque Industrial Las Monjas, 28850 Torrejon de Ardoz, Madrid, Spain	Registro de la Propiedad de Torrejon de Ardoz	5 years from 8 February 2000	Geesink B.V.
		C/ Cantalarrana, 33 28850 Torrejon de Ardoz	ESP 5,913,024 p.a.	
Geesink B.V.	C/Eje Riera, nave 158 Poligono Industrial Can Roses, 08191 Rubi, Barcelona, Spain	Registro de la Propiedad de Tarrasa no. 2	10 years from 28 June 1995	Geesink B.V.
		C/San Ignacio, 5 08221 Tarrasa	ESP 1,350,864 p.a.	

SCHEDULE 7

UK PENSIONS

1. INTERPRETATION

1.1 For the purposes of this Schedule the following terms have the following meanings:

"Actuary's Letter" means the letter from the Sellers' Actuary to the Purchasers' Actuary, a copy of which is annexed to this Schedule.

"Future Period" means the period of ten years from the date of Completion (if the Supplementary Transfer Amount is paid in full) or such shorter period as may be determined by the Purchasers' Actuary and verified by the Sellers' Actuary reflecting the value of any payment in excess of the Transfer Amount made under paragraph 5.1 having regard to the assumptions set out in the Actuary's Letter.

"Interest" means interest at the rate set out in Clause 3.4 of this Agreement.

"Interim Period" means the period from Completion to the day before the Pension Transfer Date (both dates included).

"Participating Company" means Geesink Norba Limited.

"Payment Date" means the date which is seven days after the Transfer Amount and the Supplementary Transfer Amount are determined in accordance with paragraph 4.3 or 4.4.

"Pension Transfer Date" means the date which is six months after Completion or such other date as may be agreed in writing between the Sellers and the Purchasers.

"Purchasers' Actuary" means Robert Latham of Hewitt Associates or such other actuary nominated by the Purchasers for the purpose of this Schedule.

"Purchasers' Scheme" means a retirement benefits scheme established or nominated by the Purchasers pursuant to paragraph 3.

"Relevant Employees" means those of the employees of the Participating Company who are active members of the Sellers' Scheme at Completion.

"Sellers' Actuary" means Ian Edwards of Messrs Bacon & Woodrow or such other actuary nominated by the Sellers for the purpose of this Schedule.

"Sellers' Scheme" means the PD Pension Plan established by a trust deed dated 30 March 1949.

"Supplementary Transfer Amount" has the meaning set out in the Actuary's Letter.

"Timing Adjustment" is the rate determined as set out in the Actuary's Letter.

"Transfer Amount" has the meaning set out in the Actuary's Letter.

However, where the Sellers' Scheme is in receipt of a pension sharing order or other provision in section 28(1) of the Welfare Reform and Pensions Act 1999 in respect of a Transferring Employee, the Transfer Amount shall be reduced by the value of the pension debit applied to that person's benefits in accordance with the applicable legislation and by the amount of the charges that are to be deducted from that person's entitlement insofar as the calculation of the Transfer Amount has not already taken such pension debit and charges into account.

"Transferring Employees" means those Relevant Employees:-

(a) who become members of the Purchasers' Scheme on the Pension Transfer Date; and

(b) who no later than four weeks after the Pension Transfer Date (or such later date as may be agreed in writing between the Sellers and the Purchasers) consent in a form acceptable to the trustees of the Sellers' Scheme to the transfer of an appropriate sum from the Sellers' Scheme to the Purchasers' Scheme in place of all of the benefits payable in respect of their membership of the Sellers' Scheme.

1.2 The following provisions have the same meanings given to them under the provisions of the Sellers' Scheme:

"Pensionable Earnings"

1.3 References in this Schedule to paragraphs are to paragraphs of this Schedule.

1.4 For the avoidance of doubt the provisions of clause 14 of the Agreement shall apply to this Schedule.

2. INTERIM PERIOD

2.1 The Sellers hereby undertake with the Purchasers that during the Interim Period, subject to the approval of the Inland Revenue it will procure that the Participating

Company may continue to participate in the Sellers' Scheme as an employer in respect of the Relevant Employees until the Pension Transfer Date as if it were an associated company of the Sellers.

2.2 The Purchasers hereby undertake with the Sellers that they will procure that the Participating Company will, during the Interim Period:

(a) participate in the Sellers' Scheme for the benefit of Relevant Employees who are from time to time members of the Sellers' Scheme;

(b) pay in respect of the Relevant Employees in its employment the following contributions to the Sellers' Scheme in respect of each calendar month (or part thereof) during the Interim Period:

(i) employer contributions at a rate equal to the employer's contracting-out rebate on a contracted-out money purchase basis at source; and

(ii) members' contributions at the rate of 5% of Pensionable Earnings (earned during and in respect of the calendar month or part thereof);

payment to be in arrears within 7 days of the end of the calendar month to which they relate;

(c) comply with the provisions of the Sellers' Scheme;

(d) not do or omit to do any act or thing whereby the approval under ICTA of the Sellers' Scheme or its status as a contracted-out scheme would or might be prejudiced;

(e) (if the Interim Period extends beyond 5 April 2002) not increase the Pensionable Earnings of any Relevant Employee to or above an amount which exceeds such Relevant Employees' Pensionable Earnings at Completion by more than the rate assumed in the Actuary's Letter except with the prior approval of the Sellers and on such terms as to payment of additional contributions to the Sellers' Scheme as the trustees of the Sellers' Scheme or the Sellers may require.

(f) not exercise any power or discretion under the Sellers' Scheme which would affect the benefit entitlements of the Relevant Employees without the consent of the Sellers (such consent not to be unreasonably withheld);

(g) notify the trustees of the Sellers' Scheme of the names of those Relevant Employees (if any) who cease to be employed by the Purchasers during the Interim Period; and

(h) complete such documents as the trustee of the Sellers' Scheme reasonably requires.

2.3 In the event that any contribution due to the Sellers' Scheme in accordance with paragraph 2.2 is not paid by the due date the Purchasers shall procure that the Participating Company shall pay Interest on the over due amount.

2.4 The Purchasers will promptly deliver to the Sellers drafts before they are issued and copies once they are issued of all notices and announcements relating to the Sellers' Scheme or the Purchasers' Scheme supplied to the Relevant Employees before the Pension Transfer Date.

2.5 The Purchasers undertake that during the Interim Period the Participating Company shall if so required by the Sellers in writing, nominate the Seller (or such other person as the Seller may direct) as:

(a) the appropriate person under section 21(9) of the Pensions Act 1995;

(b) its representative for the purposes of section 58(4) of the Pensions Act 1995, as modified by the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuation) Regulations 1996; and

(c) its agent for the purposes of consultation under section 35(5) of the Pensions Act 1995.

2.6 The Sellers undertake to procure that the Sellers' Scheme will not be terminated or amended if any amendment would have the effect of reducing the Transfer Amount prior to the payment of the Transfer Amount and the Supplementary Transfer Amount in accordance with paragraph 5 or, if sooner, 12 months after the Pension Transfer Date.

2.7 The Sellers and the Purchasers shall use their best endeavours to procure that while the Relevant Employees are members of the Sellers' Scheme their employment shall be contracted-out employment (within the meaning of section 8 of the Pension Schemes Act 1993) by reference to the Sellers' Scheme.

2.8 The Sellers undertake with the Purchasers that they will not take any actions (other than those required by law or in accordance with the provisions of this Schedule) to

persuade Relevant Employees not to consent to become Transferring Members. For the avoidance of doubt, the Sellers and the Purchasers agree that this paragraph 2.8 will not prevent the Sellers from providing information to any Relevant Employee in connection with, and in particular regarding his or her benefits under, the Sellers' Scheme.

3. THE PURCHASERS' SCHEME

3.1 The Purchasers will establish or nominate the Purchasers' Scheme before the Pension Transfer Date and will procure that the Participating Company will participate in the Purchasers' Scheme. All Relevant Employees then employed by the Participating Company who have not attained normal pension date will be invited to become members of the Purchasers' Scheme with effect from the Pension Transfer Date. The Purchasers' Scheme shall remain in full force and effect for at least the remainder of the Future Period.

3.2 The Purchasers' Scheme shall provide benefits in accordance with paragraphs 3.3 and 3.4 and shall:-

(a) be a final salary scheme, designed to be approved under Chapter I of Part XIV of ICTA or capable of such approval; and/or

(b) be a money purchase scheme, designed to be approved under Chapter I or Chapter IV of Part XIV of ICTA and be either (i) a contracted-out scheme for the purposes of Section 9(3) of the Pension Schemes Act 1993 or (ii) an appropriate scheme for the purposes of Part III of the Pension Schemes Act 1993;

and the Purchasers will use their reasonable endeavours to procure that the Purchasers' Scheme accepts the transfer to the Purchasers' Scheme of the accrued rights of the Transferring Employees including the liabilities of the Sellers' Scheme under the Pension Schemes Act 1993 in respect of the contracted-out service of each Transferring Employee. For the avoidance of doubt, if the Purchasers' Scheme is a final salary scheme which is not a contracted-out scheme for the purposes of Section 9(2B) of the Pension Schemes Act 1993 the Purchasers will also establish or nominate a money purchase scheme as set out in (b) above.

3.3 Subject to receipt of the Transfer Amount, the Purchasers will procure that

(a) where the Purchasers' Scheme is of a type described in paragraph 3.2(a), the Purchasers' Scheme will provide for and in respect of each Transferring

Employee benefits in respect of Pensionable Service in the Sellers' Scheme before the Pension Transfer Date which, in the opinion of the Purchasers' Actuary, are broadly equivalent in value calculated on the assumptions in the Actuary's Letter (such calculations to be verified by the Sellers' Actuary) to the benefits that would have been provided for and in respect of the member under the Sellers' Scheme in respect of Pensionable Service before the Pension Transfer Date if the member had remained in service as a member of the Sellers' Scheme up to the date of retirement, death or leaving service; or

(b) where the Purchasers' Scheme is of a type described in paragraph 3.2(b), the proportion of the Transfer Amount applicable to each Transferring Employee is credited to that Transferring Employee's account in the Purchasers' Scheme without any deduction for expenses (other than reasonable ongoing investment management expenses).

(2) On the agreement of the calculations in paragraph 4.1 below, the Purchasers will within one month prepare individual communications for each Relevant Employee (such communications to be agreed by the Sellers) which shall set out the transfer terms to be offered to them.

3.4 Subject to receipt of the Supplementary Transfer Amount or any other amount greater than the Transfer Amount (as adjusted in accordance with paragraph 5.1), the Purchasers will use all reasonable endeavours in conjunction with the Sellers to ensure that those of the Transferring Employees with continued rights to pre-1989 Inland Revenue Limits will retain the same rights in the Purchasers' Scheme and,

(a) where the Purchasers' Scheme is of a type described in paragraph 3.2(a) the Purchasers will procure that for each Transferring Employee the Purchasers' Scheme will provide for the remainder of the Future Period defined benefits in respect of service after the Pension Transfer Date with the Participating Company which, in the opinion of the Purchasers' Actuary, are broadly equivalent in value (taking account of any improvements in the method of remuneration of such Transferring Employee) calculated on the assumptions in the Actuary's Letter (such calculations to be verified by the Sellers' Actuary) to the benefits that would have been provided under the Sellers' Scheme for and in respect of the employee based on such service had the employee remained a contributing member of the Sellers' Scheme and that the contributions payable by each Transferring Member (if any) during the remainder of the Future Period will not be higher than the contributions payable by the employee to the Sellers' Scheme immediately prior to the

Pension Transfer Date, unless such a change in the contribution rate can be justified following an improvement in benefit provision under the Purchasers' Scheme; and/or

(b) where the Purchasers' Scheme is of a type described in paragraph 3.2(b) the Purchasers will procure that in respect of Transferring Employees employer contributions will be credited to the accounts of Transferring Employees during the remainder of the Future Period under a contribution structure which, in the opinion of the Purchasers' Actuary, is broadly equivalent in value (taking account of any improvements in the method of remuneration of such Transferring Employee) calculated on the assumptions in the Actuary's Letter (such calculations to be verified by the Sellers' Actuary) to the defined benefits that would have been provided under the Sellers' Scheme for and in respect of the employee had the employee remained a contributing member of the Sellers' Scheme.

3.5 The Purchasers will procure that the Transferring Employees will receive fair and equal treatment as members of the Purchasers' Scheme.

4. THE TRANSFER PAYMENT

4.1 The Sellers shall procure that the Sellers' Actuary makes a provisional calculation of the Transfer Amount and the Supplementary Transfer Amount as soon as reasonably practicable and in any event not later than two months before the Pension Transfer Date (assuming for these purposes that the Pension Transfer Date ends on a date which is six months after Completion and further assuming that all Relevant Employees are to be Transferring Employees) and notifies the Purchasers' Actuary of the amount for verification by the Purchasers' Actuary. If the Purchasers' Actuary is unable to agree the Sellers' Actuary's calculations within one month of his receipt of the calculations either party may refer the matter to an independent actuary pursuant to paragraph 4.4 below.

4.2 The Sellers and the Purchasers shall as soon as reasonably practicable and in any event not later than two months after the Pension Transfer Date provide the Sellers' Actuary and the Purchasers' Actuary with documents and information in their respective possession or control as the Sellers' Actuary and the Purchasers' Actuary may reasonably require in order to calculate and verify the Transfer Amount and the Supplementary Transfer Amount.

4.3 The Sellers shall procure that the Sellers' Actuary calculates as soon as reasonably practicable and in any event not later than four months after the Pension Transfer Date the Transfer Amount and the Supplementary Transfer Amount and notifies the Purchasers' Actuary of the amount for verification by the Purchasers' Actuary. If the Purchasers' Actuary is unable to agree the Sellers' Actuary's calculations within one month of his receipt of the calculations either party may refer the matter to an independent actuary pursuant to paragraph 4.4 below.

4.4 Any dispute between the Sellers' Actuary and the Purchasers' Actuary concerning the mathematics of calculating the Transfer Amount, the Supplementary Transfer Amount or the Future Period and any disagreement between them arising under paragraphs 3.3(a), 3.4(a) and 3.4(b) shall, in the absence of agreement between them, be referred to an independent Actuary agreed by the Sellers and the Purchasers or (failing agreement within 7 days of a written request from one party to the other to agree to the appointment of such an actuary) appointed at the request of the Sellers or the Purchasers by or on behalf of the President for the time being of the Institute of Actuaries. The decision of any such independent actuary shall be final and his expenses shall be borne equally by the Sellers and the Purchasers or otherwise in his absolute discretion as he may determine. The independent actuary shall act as an expert not as an arbitrator.

5. PAYMENT OF THE TRANSFER AMOUNT AND THE SUPPLEMENTARY TRANSFER AMOUNT

5.1 Subject to them being satisfied that the Purchasers have met or will meet its obligations under paragraphs 2 and 3 above and to the consent of the Inland Revenue having been obtained to such a payment, the Sellers will use all reasonable endeavours to procure that the trustees of the Sellers' Scheme transfer to the trustees of the Purchasers' Scheme assets mutually agreed between the trustees of the Sellers' Scheme and the trustees of the Purchasers' Scheme equal in value on the basis set out in the Actuary's letter to the Transfer Amount and the Supplementary Transfer Amount (adjusted by the Timing Adjustment during the period from the Pension Transfer Date to the Payment Date) or otherwise in cash (subject to deduction for reasonable expenses incurred in realising assets).

5.2 If and to the extent that the sum (if any) paid by the trustees of the Sellers' Scheme under paragraph 5.1 above is less than the Transfer Amount (as adjusted and subject to the deduction referred to in paragraph 5.1), the Sellers (as principal and not as guarantor) will itself pay the difference between the Transfer Amount (as adjusted and subject to the deduction referred to in paragraph 5.1) and the amount actually paid (if

any) to the Purchasers (as an adjustment to the Purchase Price), which amount shall be called "the Shortfall".

5.3 If a payment is made under paragraph 5.2 the Purchasers will procure that the Participating Company shall make a payment equal to the Shortfall to the Purchasers' Scheme within five Business Days of receipt. If the Participating Company's liability to corporation tax applicable to its profits is reduced as a result of the payment of this amount together with Interest thereon into the Purchasers' Scheme the Purchasers shall repay in cash to the Sellers an amount equal to such deduction (as an adjustment to the Purchase Price) within seven days of the date on which the Shortfall is paid to the Purchasers' Scheme.

6. ADDITIONAL VOLUNTARY CONTRIBUTIONS

Any additional voluntary contributions made to the Sellers' Scheme by any Relevant Employee (and the moneys, interest and benefits derived from those contributions) which are used to provide money purchase benefits (as defined in the Pension Schemes Act 1993) shall be disregarded for the purposes of calculating the Transfer Amount, but the Sellers shall use reasonable endeavours to procure that the trustees of the Sellers' Scheme will as soon as practicable after the Pension Transfer Date transfer to the Purchasers' Scheme (without penalty or deduction) the assets and/or the amount standing to the credit of each Transferring Employee in respect of additional voluntary contributions paid to the Sellers' Scheme.

7. MISCELLANEOUS

7.1 Neither the Purchasers the Participating Company nor any company directly or indirectly controlled by or connected with it will encourage or initiate any action or provide financial assistance for the purpose of requiring the trustees of the Sellers' Scheme to pay a larger amount than the Transfer Amount and the Supplementary Transfer Amount (adjusted by the Timing Adjustment).

7.2 If after Completion any Relevant Employee ceases to be employed by the Participating Company and becomes employed by an employer associated with the Participating Company (within the meaning of section 590A of the ICTA), that Relevant Employee will be deemed to be an employee of the Participating Company for the purposes of this Schedule, and the Purchasers will comply and will procure that such other employer complies with the obligations imposed upon the Purchasers and the Participating Company by this Schedule in relation to that employee.

SCHEDULE 8

APPORTIONMENT OF PURCHASE PRICE

	euros(E)	Proportion(%)
Geesink Group BV	117,148,000	84.8
Norba AB	10,500,000	7.6
Geesink Norba Limited	10,500,000	7.6

In the event that the Purchase Price is greater or less than the sum of the amounts shown above, the Purchase Price (together with any relevant interest in respect thereof payable pursuant to Clause 3 (Purchase Price)) shall be allocated as between each of Geesink Group BV, Norba AB and Geesink Norba Limited in the same proportion as detailed above.

SCHEDULE 9

CONDUCT BETWEEN EXCHANGE AND COMPLETION

1. The Sellers undertake that they shall procure that between the date of this Agreement and Completion, except with the prior written consent of the Purchasers (such consent not to be unreasonably withheld or delayed), each of the Companies and the Subsidiaries shall:

- (a) not enter into, modify or terminate any contract other than in the ordinary course of business;
- (b) not create, allot, issue, repay or redeem any share or loan capital;
- (c) not declare, make or pay any distribution of capital or income in respect of any share capital of the Company;
- (d) not allow any rights relating to Company Intellectual Property to lapse;
- (e) not undertake any action for which consent of Stephen Harris would be required in accordance with the Finance Manual;
- (f) not acquire or dispose of or agree to acquire or dispose of any part of its business or undertaking or, except in the ordinary course of business, of any asset;
- (g) not allow any unusual increase or decrease in the level of Stock other than in the ordinary course of business;
- (h) not write off or write down (in each case other than in the ordinary course of business) or assign to a third party at less than full value any obligations owed to it;
- (i) not amend the terms of any agreement or arrangement concerning Inter-Company Loans or where monies are advanced to any other person (not being a member of the Group);
- (j) not (except in the ordinary course of business) release, discharge or compound any liability, claim, action, demand or dispute and shall not (except in the ordinary course of business) initiate or compromise or settle any litigation or arbitration proceedings or waive any right in relation to or the subject of litigation or arbitration proceedings;
- (k) not enter into or modify any agreement or arrangement (legally enforceable or not) in which any of its directors or former directors or any of the Sellers or any of their respective Associates is interested (directly or indirectly);

(l) except pursuant to the Agreed Redundancy Programme, not employ or engage or terminate the employment or engagement of any director, employee or consultant except an employee engaged at a basic salary not exceeding (E)65,000 or increase the salary of any director, employee or consultant by more than 5% or in excess of (E)100,000 in aggregate;

(m) not make capital expenditure or incur any capital commitments in excess of (E)75,000 in respect of any one item or (E)500,000 in total, save as set out in the current budget for the Group;

(n) not do or omit to do anything which would or might derogate from the validity and enforceability of the Company Intellectual Property;

(o) Pay all relevant social security and national insurance contributions in relation to its employees;

(o) not (conditionally or unconditionally) offer or agree to do any of the things referred to in any of the foregoing paragraphs.

2. The Sellers undertake that they shall use their reasonable endeavours to procure that between the date of this Agreement and Completion none of the Companies and/or the Subsidiaries shall, whether by any act or omission:

(a) breach any of the licences, consents, permits, approvals and authorities (public and private) which have been obtained by the Company to enable the Company to carry on its business lawfully in the place and in the manner in which its business is now carried on;

(b) breach any relevant statutory requirement, by-laws or regulations of the United Kingdom or elsewhere applicable to it or its business where such contravention will have an adverse effect on the continued operation of the Company and/or the Subsidiaries;

(c) breach any contracts which any Company and/or Subsidiary is a party which could lead to a claim for compensation, damages, specific performance or an injunction being made against any Company and/or Subsidiary or which would entitle a third party to call in any monies before the normal due date, which will in any event materially adversely affect the business of the Company (which for the purposes hereof shall mean if the amount that would otherwise be recoverable from the Sellers arising from an individual breach is (E)100,000 or more);

- (d) give grounds for rescission, avoidance or repudiation of any agreement or other transaction which any Company and/or Subsidiary is a party;
- (e) permit any premiums payable in respect of the Company's insurance policies not to be paid or permit any incidents likely to give rise to a claim under the Company's insurance policies not to be notified to the Company's insurers in accordance with the terms thereof;
- (f) give grounds for any claim (including but not limited to any claim in respect of an industrial accident) by any employee or former employee of the Company;
- (g) breach any of the covenants, conditions, restrictions or agreements or other matters subject to which any of the Properties are held or the provisions or requirements, permissions, licenses, approvals, by-laws, orders, regulations or other requirements or obligations affecting or likely to affect each of the Properties or its current use;
- (h) permit any circumstances to arise which would lead to any closing, demolition order, clearance order or enforcement notice being issued in respect of the Properties or any of the Companies and/or Subsidiaries as owner or occupier thereof;
- (i) breach any Environmental Laws;
- (j) permit any breach of applicable laws, regulations and legally binding and approved codes of practice made or issued by national or local government or by any regulatory body or by any court in each case with legally enforceable powers relating to the prevention of accidents and of injury to employees and to lawful and unlawful visitors to the Properties that are in existence at the date of this Agreement and legally enforceable both in respect of the activities undertaken at the date of this Agreement at the Properties and in respect of the Properties themselves at the date of this Agreement (and for the purpose hereof the Companies and/or the Subsidiaries shall be deemed not to have complied in a material respect if the amount that would otherwise be recoverable from the Sellers arising from that instance of non-compliance is (E)100,000 or more);
- (k) fail to comply with, discharge or fulfill any requirement, liability or obligation (whether statutory or contractual) in relation to its employees, including relevant legislation or codes of practice and any applicable laws in relation to employment or employees;
- (l) permit any breach of any applicable statutory or other requirements relating to each of the Properties including requirements relating to planning, development, fire safety and health and safety at work.

SCHEDULE 10

EXAMPLE CALCULATION OF NET DEBT

Example Calculation of Net Debt - Consolidated Accounts Format

(NLG `000s)

Loans and Overdrafts (Due within one year)	4,267
Plus: Loans (Due after one year)	392
Plus: Other amounts due to Powell Duffryn subsidiary undertakings (Other Creditors)	30,422

Total Debt	35,081
Less: Amounts due from Powell Duffryn subsidiary undertakings (1)	242
Less: Cash at bank and in hand (Current Assets)	8,726

Net Debt	26,113

Source: Consolidated Accounts for period ending 31 March 2001

(1) Represents an amount to be classified as Inter-Company Loans.

Example Calculation of Net Debt - Management Accounts Format

(NLG `000s)

Overdraft	1,175
Plus: Group Funding (1)	30,186
Plus: HP/ Finance Leases	169
Plus: External Loans	384

Total Debt	31,914
Less: Cash at Bank	5,795

Net Debt	26,119

Source: March 31, 2001 management accounts

(1) Includes the Amounts due from Powell Duffryn, which, in the management accounts, are deducted from the amount of group funding.

EXECUTION:

SIGNED by [Stephen C. Harris duly authorised for and on behalf of POWELL DUFFRYN HOLDINGS BV]) /s/ Stephen C. Harris))
SIGNED by [Roger Gordon Lee duly authorised for and on behalf of POWELL DUFFRYN (INTERNATIONAL) LIMITED]) /s/ Roger Gordon Lee))
SIGNED by [Roger Gordon Lee duly authorised for and on behalf of POWELL DUFFRYN INVESTMENTS LIMITED]) /s/ Roger Gordon Lee))
SIGNED by [Timothy M. Dempsey duly authorised for and on behalf of OSHKOSH GROUP BV]) /s/ Timothy M. Dempsey) Executive Vice President,) General Counsel and Secretary
SIGNED by [Timothy M. Dempsey duly authorised for and on behalf of OSHKOSH EUROPEAN HOLDINGS SL]) /s/ Timothy M. Dempsey) Executive Vice President,) General Counsel and Secretary
SIGNED by [Stephen C. Harris duly authorised for and on behalf of POWELL DUFFRYN LIMITED]) /s/ Stephen C. Harris))
SIGNED by [Charles L. Szews duly authorised for and on behalf of OSHKOSH TRUCK CORPORATION]) /s/ Charles L. Szews) Executive Vice President and) Chief Financial Officer

EXECUTION COPY

\$364,000,000

SECOND AMENDED AND RESTATED

CREDIT AGREEMENT

Dated as of July 23, 2001

among

OSHKOSH TRUCK CORPORATION,

BANK OF AMERICA, N.A.,

as Agent

and

as Swing Line Lender,

BANK ONE, NA,

as Syndication Agent,

FIRSTAR BANK, N.A.,

as Documentation Agent

and

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

BANC OF AMERICA SECURITIES LLC,

as Lead Arranger and Book Manager

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SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is entered into as of July 23, 2001, among Oshkosh Truck Corporation, a Wisconsin corporation (the "Company"), the several financial institutions from time to time party to this Agreement (collectively, the "Lenders"; individually, a "Lender"), and Bank of America, N.A. (f/k/a Bank of America National Trust and Savings Association), as Swing Line Lender and as agent for the Lenders.

WHEREAS, the Company, the lenders party thereto and the Agent entered into that certain Amended and Restated Credit Agreement dated as of September 28, 2000 (the "Prior Credit Agreement"), pursuant to which such lenders refinanced the existing term loans, refinanced and increased the existing revolving credit facility and letter of credit and swing line subfacilities and added a fronted offshore currency subfacility and, concurrently, amended and restated in its entirety the Credit Agreement dated as of February 26, 1998 (as amended as of December 21, 1999) among the Company, the Lenders party thereto and the Agent (the "Original Credit Agreement");

WHEREAS, the Company, the Lenders and the Agent wish to amend and restate the Prior Credit Agreement in order to (i) increase the existing fronted offshore currency subfacility, (ii) add an additional term loan facility and (iii) provide for certain additional amendments to the Prior Credit Agreement; and

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree, subject to the fulfillment of the conditions precedent set forth in Section 5.01, that the Prior Credit Agreement is hereby amended and restated in its entirety as follows:

ARTICLE I

DEFINITIONS

1.01 Certain Defined Terms. The following terms have the following meanings:

"Acquired Companies" shall mean each of Geesink Norba, Ltd., Norba AB and Geesink Group BV.

"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 the Company or the Subsidiary is the surviving entity.

"Acquisition Documents" means the Purchase Agreement and the other documents, certificates and agreements delivered in connection with the Geesink Acquisition.

"Affiliate" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

"Agent" means BofA in its capacity as agent for the Lenders hereunder, and any successor agent arising under Section 10.09.

"Agent-Related Persons" means BofA and any successor agent arising under Section 10.09 and any successor letter of credit issuing bank hereunder, together with their respective Affiliates (including, in the case of BofA, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Agent's Payment Office" means the address for payments set forth on Schedule 11.02 or such other address as the Agent may from time to time specify.

"Aggregate Commitment" means the sum of (a) the Aggregate Revolving Loan Commitment and (b) the Aggregate Term Loan Commitment.

"Aggregate Revolving Loan Commitment" means the aggregate Revolving Loan Commitments of the Lenders.

"Aggregate Term Loan A Commitment" means the aggregate Term Loan A Commitments of the Lenders, initially equal to Sixty Million Dollars (\$60,000,000).

"Aggregate Term Loan B Commitment" means the aggregate Term Loan B Commitments of the Lenders, initially equal to One Hundred and Forty Million Dollars (\$140,000,000).

"Aggregate Term Loan Commitment" means the aggregate Term Loan Commitments of the Lenders, equal to One Hundred and Ninety Four Million Dollars (\$194,000,000) on the Second Restatement Date.

"Agreement" means this Credit Agreement.

"Agreement Currency" has the meaning specified in subsection 11.18.

"Alternate Currency" shall mean any Offshore Currency (and any other currency which is at the relevant time freely traded in the offshore interbank foreign exchange

markets and is freely transferable and freely convertible into Dollars) which, as applicable, (a) the applicable Borrower requests the applicable Offshore Currency Fronting Lender to include as an Alternate Currency hereunder and which is acceptable to the applicable Offshore Currency Fronting Lender and with respect to which an Offshore Currency Addendum has been executed by a Subsidiary Borrower or the Company and the applicable Offshore Currency Fronting Lender in connection therewith or (b) a Borrower requests as the currency in which a Letter of Credit is to be denominated and which is acceptable to the Issuer thereof.

"Applicable Base Rate Margin" means, subject to the last sentence of this definition, for any period, the applicable of the following percentages in effect with respect to such period as the Leverage Ratio of the Company shall fall within the indicated ranges:

Leverage Ratio		Applicable Base Rate Margin (in basis points) for Revolving Loan and Term Loan A	Applicable Base Rate Margin (in basis points) for Term Loan B
Less Than ----	Greater Than or Equal to -----		
1.5:1.0	----	0	125.0
2.0:1.0	1.5:1.0	0	125.0
2.5:1.0	2.0:1.0	12.5	125.0
3.0:1.0	2.5:1.0	37.5	125.0
3.5:1.0	3.0:1.0	62.5	125.0
4.0:1.0	3.5:1.0	87.5	125.0
----	4.0:1.0	125.0	125.0

The Leverage Ratio shall be calculated by the Company as of the end of each fiscal quarter, commencing with the fiscal quarter ending September 30, 2000, and shall be reported to the Agent pursuant to a Compliance Certificate executed by a Responsible Officer of the Company and delivered pursuant to subsection 7.02(b) hereof. The Applicable Base Rate Margin shall be adjusted, if necessary, on the third Business Day after the delivery of such certificate; provided, that from and after the Second Restatement Date until the date six months after the date hereof, unless required to be increased as provided above, the Applicable Base Rate Margin with respect to Revolving Loans and Term Loan A shall be 62.5 basis points; and further provided that if such certificate, together with the financial statements to which such certificate relates, is not delivered to the Agent by the fifth Business Day after the date on which the related financial statements are due to be delivered to the Agent pursuant to subsection 7.01(a) or (b), then, from such fifth Business Day until the third Business Day after delivery of such certificate, the Applicable Base Rate Margin shall be equal to 125 basis points with respect to Revolving Loans and Term Loan A.

"Applicable Commitment Fee Percentage" means, subject to the last sentence of this definition, for any period, the applicable of the following percentages in effect with

respect to such period as the Leverage Ratio of the Company shall fall within the indicated ranges:

Leverage Ratio		Applicable Commitment Fee Percentage (in basis points)
Less Than	Greater Than or Equal to	
1.5:1.0	----	20.0
2.0:1.0	1.5:1.0	25.0
2.5:1.0	2.0:1.0	30.0
3.0:1.0	2.5:1.0	35.0
3.5:1.0	3.0:1.0	40.0
4.0:1.0	3.5:1.0	45.0
----	4.0:1.0	50.0

The Leverage Ratio shall be calculated by the Company as of the end of each fiscal quarter, commencing with the fiscal quarter ending September 30, 2000, and shall be reported to the Agent pursuant to a Compliance Certificate executed by a Responsible Officer of the Company and delivered pursuant to subsection 7.02(b) hereof. The Applicable Commitment Fee Percentage shall be adjusted, if necessary, on the third Business Day after the delivery of such certificate; provided, that from and after the Second Restatement Date until the date six months after the date hereof, unless required to be increased as provided above, the Applicable Commitment Fee Percentage shall be 40.0 basis points; and further provided that if such certificate, together with the financial statements to which such certificate relates, is not delivered to the Agent by the fifth Business Day after the date on which the related financial statements are due to be delivered to the Agent pursuant to subsection 7.01(a) or (b), then, from such fifth Business Day until the third Business Day after delivery of such certificate, the Applicable Commitment Fee Percentage shall be equal to 50 basis points.

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

"Applicable Offshore Rate Margin" means, subject to the last sentence of this definition, for any period, the applicable of the following percentages in effect with respect to such period as the Leverage Ratio of the Company shall fall within the indicated ranges:

Leverage Ratio	Applicable Offshore Rate Margin (in basis points) for Revolving Loans and Term Loan A	Applicable Offshore Rate Margin (in basis points) for Term Loan B
-----	-----	-----

Less Than ----	Greater Than or Equal to -----		
1.5:1.0	----	100.0	250.0
2.0:1.0	1.5:1.0	112.5	250.0
2.5:1.0	2.0:1.0	137.5	250.0
3.0:1.0	2.5:1.0	162.5	250.0
3.5:1.0	3.0:1.0	187.5	250.0
4.0:1.0	3.5:1.0	212.5	250.0
----	4.0:0.1	250.0	250.0

The Leverage Ratio shall be calculated by the Company as of the end of each fiscal quarter, commencing with the fiscal quarter ending September 30, 2000, and shall be reported to the Agent pursuant to a Compliance Certificate executed by a Responsible Officer of the Company and delivered pursuant to subsection 7.02(b) hereof. The Applicable Offshore Rate Margin shall be adjusted, if necessary, on the third Business Day after the delivery of such certificate, with such adjustment to apply to all Interest Periods then outstanding and beginning thereafter until the next adjustment date; provided, that from and after the Second Restatement Date until the date six months after the date hereof, unless required to be increased as provided above, the Applicable Offshore Rate Margin shall be 187.5 basis points with respect to Revolving Loans and Term Loan A; and further provided that if such certificate, together with the financial statements to which such certificate relates, is not delivered to the Agent by the fifth Business Day after the date on which the related financial statements are due to be delivered to the Agent pursuant to subsection 7.01(a) or (b), then, from such fifth Business Day until the third Business Day after delivery of such certificate, the Applicable Offshore Rate Margin shall be equal to 250 basis points with respect to Revolving Loans and Term Loan A.

"Approved Fund" means, with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Arranger" means Banc of America Securities LLC, a Delaware corporation.

"Asset Disposition" has the meaning specified in Section 8.02.

"Assignee" has the meaning specified in subsection 11.08(a).

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

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C.ss.101, et seq.).

"Base Rate" means for any day a fluctuating rate per annum equal to, in the case of Loans in Dollars, the higher of (a) the Federal Funds Rate plus 1/2 of 1%; or (b) the rate of interest in effect for such day as publicly announced from time to time by BofA as its "prime rate" and, in the case of Loans in any Alternate Currency, the comparable rate for such Alternate Currency, as reasonably determined by the Agent or Offshore Currency Funding Lender, as applicable. Such "prime rate" is a rate set by BofA based upon various factors including BofA'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 BofA 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 or an L/C Advance that bears interest based on the Base Rate and is denominated in Dollars.

"basis point" means one one-hundredth of one percent.

"BofA" means Bank of America, N.A., a national banking association.

"Borrower" means either the Company or any Subsidiary Borrower.

"Borrowing" means a borrowing hereunder consisting of Revolving Loans or Term Loans of the same Type made to the Company on the same day by the Lenders or a borrowing consisting of Revolving Loans of the same type made to a Subsidiary Borrower under Article II, and, in the case of Offshore Rate Loans, having the same Interest Period and denominated in the same Offshore Currency. The making of either a Swing Line Loan or a Fronted Offshore Currency Loan shall not constitute a Borrowing.

"Borrowing Date" means any date on which a Borrowing occurs under Section 2.03.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to close or are in fact closed, in the state where the Agent's Payment Office is located and, if the applicable Business Day relates to any Offshore Rate Loan denominated in Dollars, means such a day on which dealings are carried on in the applicable offshore dollar interbank market and, if the applicable Business Day relates to any Offshore Rate Loan denominated in any Offshore Currency, a day on which commercial banks are open for foreign exchange business in London, England, and on which dealings in the relevant Offshore Currency are carried on in the applicable offshore foreign exchange interbank market in which disbursements of or payments in such Offshore Currency will be made or received hereunder.

"Capital Adequacy Regulation" means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy of any bank or of any corporation controlling a bank.

"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.

"Captive Finance Subsidiary" means Oshkosh Capital, L.L.C., a wholly owned subsidiary of Oshkosh/McNeilus Financial Services, Inc., formed to originate, sell and, if necessary, hold leases of products manufactured or sold by the Company and its Subsidiaries to unrelated third parties.

"Cash Collateralize" means to pledge and deposit with or deliver to the Agent, for the benefit of the Agent, the Issuers and the Lenders, as additional collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance reasonably satisfactory to the Agent and the Issuers (which documents are hereby consented to by the Lenders). Derivatives of such term shall have corresponding meanings. The Company hereby grants the Agent, for the benefit of the Agent, the Issuers and the Lenders, a security interest in all such cash and deposit account balances. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at BofA while an Event of Default is continuing and shall be transferred to an interest bearing account as soon as practicable after the termination of such Event of Default.

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

"Change of Control" means the occurrence of any of the following: (a) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole to any "person" (as such term is used in Section 13(d)(3) of the Exchange Act); (b) the adoption of a plan relating to the liquidation or dissolution of the Company; (c) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as defined above) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act, 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 currently exercisable or is exercisable only upon the occurrence of a subsequent condition), directly or indirectly of more than 30% of the Voting Stock of the Company (measured by voting power rather than number of shares); (d) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance); or (e) during any period of 25

consecutive calendar months, commencing on the Second Restatement Date, the ceasing of those individuals (the "Continuing Directors") who (i) were directors of the Company on the first day of each such period or (ii) subsequently became directors of the Company and whose actual election or initial nomination for election subsequent to that date was approved by a majority of the Continuing Directors then on the board of directors of the Company, to constitute a majority of the board of directors of the Company.

"Closing Date" means February 26, 1998, the date of the closing of the Original Credit Agreement

"Code" means the Internal Revenue Code of 1986, and regulations promulgated thereunder.

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by the Company or any Guarantor and their respective Subsidiaries in or upon which a Lien now or hereafter exists in favor of the Lenders, or the Agent on behalf of the Lenders, whether under this Agreement, under the Collateral Documents or under any other documents executed by any such Person and delivered to the Agent or the Lenders.

"Collateral Documents" means, collectively, (a) the Security Agreement, the Mortgages, the Pledge Agreement, the Subsidiary Guaranty, the Subsidiary Security Agreement, the Foreign Subsidiary Pledge Agreement, the Foreign Subsidiary Guaranty Agreement, the Foreign Subsidiary Security Agreement and all other security agreements, mortgages, deeds of trust, patent and trademark assignments, lease assignments, guarantees and other similar agreements between the Company or any Subsidiary or any Guarantor and the Lenders or the Agent for the benefit of the Lenders previously, now or hereafter delivered to the Lenders or the 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 the Company or any Subsidiary or any Guarantor as debtor in favor of the Lenders or the Agent for the benefit of the Lenders as secured party, and (b) any amendments, supplements, modifications, renewals, replacements, consolidations, substitutions and extensions of any of the foregoing.

"Commitment", as to each Lender, means (a) such Lender's Term Loan Commitment, plus (b) such Lender's Revolving Loan Commitment.

"Company" has the meaning specified in the introductory clause hereto.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Computation Date" has the meaning specified in subsection 2.08(a).

"Consolidated EBITDA" means, for any period, for the Company and its Subsidiaries on a consolidated basis, determined in accordance with GAAP, the sum of

(a) the net income (or net loss) for such period, plus (b) all amounts treated as expenses for depreciation and interest and the amortization of intangibles of any kind to the extent included in the determination of such net income (or loss), plus (c) all accrued taxes on or measured by income to the extent included in the determination of such net income (or net loss), plus (d) all charges (or less any credits) in such period arising from LIFO valuation, plus (or less, if negative)

(e) the amount of post-retirement health benefits accrued in such period less the amount of post-retirement health benefits paid in such period, in an amount of up to \$1,000,000 in any period, plus (f) all charges arising from the write down of fixed assets, severance payments, relocation expenses, one-time ERP installation costs of the Acquired Companies and customer penalties incurred by the Acquired Companies taken after the Closing Date with respect to Acquisitions permitted hereunder, in an amount not to exceed \$10,000,000 in the aggregate, plus (g) all charges (or less any credits) arising from the write-off of intangible assets (without duplication of any amounts set forth in clause (b)); provided, however, that net income (or net loss) shall be computed (i) without giving effect to extraordinary losses or extraordinary gains, (ii) without regard to the net income (or net loss) of Leasing Subsidiaries or to the carrying value of the equity interest of the Company and its Subsidiaries in Leasing Subsidiaries, and (iii) without giving effect to any dividends or other distributions received by the Company and its Subsidiaries from Leasing Subsidiaries or any equity contributions made by the Company and its Subsidiaries to Leasing Subsidiaries; provided, further, that for purposes of computing Consolidated EBITDA for purposes of Sections 8.15, 8.17 and 8.18, Acquisitions permitted hereunder (including the Geesink Acquisition) made by the Company or any of its Subsidiaries during the four-quarter reference period shall be deemed to have occurred (and any Indebtedness incurred or assumed in connection therewith shall be deemed to have been incurred or assumed) on the first day of the four-quarter reference period and Consolidated EBITDA for such reference period shall be calculated to include pro forma adjustments with respect to income and expense associated with the acquired assets or entity (all consistent with items (b) through (g) above).

"Contingent Obligation" means, as to any Person, any direct or indirect liability of that Person, whether or not contingent, with or without recourse, (a) with respect to any Indebtedness, lease, dividend, letter of credit or other obligation (the "primary obligations") of another Person (the "primary obligor"), including any obligation of that Person (i) to purchase, repurchase or otherwise acquire such primary obligations or any security therefor, (ii) to advance or provide funds for the payment or discharge of any such primary obligation, or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof (each, a "Guaranty Obligation"); (b) with respect to any Surety Instrument issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or payments;

(c) to purchase any materials, supplies or other property from, or to obtain the services of, another Person

if the relevant contract or other related document or obligation requires that payment for such materials, supplies or other property, or for such services, shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered, or such services are ever performed or tendered; or (d) in respect of any Swap Contract (other than in respect of ordinary course foreign currency hedging arrangements). The amount of any Contingent Obligation, (w) in the case of Guaranty Obligations (excluding payment guarantees made to third parties in connection with Bank One leasing programs, which shall be valued at the maximum stated amount of any such guarantees), shall be deemed equal to the lesser of (i) the stated or determinable amount of the primary obligation in respect of which such Guaranty Obligation is made or, if not stated or if indeterminable, the maximum reasonably anticipated liability in respect thereof, and (ii) the stated amount of the guaranty, (x) in the case of Contingent Obligations in respect of Swap Contracts, shall be deemed equal to the aggregate Swap Termination Value of such Swap Contracts,

(y) in the case of Contingent Obligations in respect of Surety Instruments other than Non-Surety L/C's, shall be deemed equal to the probable amount of the expected liability thereunder, and (z) in the case of Contingent Obligations in respect of Non-Surety L/C's, shall be deemed equal to (i) the face amount of outstanding Non-Surety L/C's which are not Letters of Credit and (ii) the outstanding amount of L/C Obligations in respect of Non-Surety L/C's which are Letters of Credit pursuant to Article III.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, 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/Continuation Date" means any date on which, under Section 2.04, the Company (a) converts Loans of one Type to another Type, or (b) continues as Loans of the same Type, but with a new Interest Period, Loans having Interest Periods expiring on such date.

"Credit Extension" means and includes (a) the making of any Loans hereunder, and (b) the Issuance of any Letters of Credit hereunder.

"Current Assets" means all assets of the Company, on a consolidated basis, which should, in accordance with GAAP, be classified as current assets.

"Current Liabilities" means all liabilities of the Company, on a consolidated basis, which should, in accordance with GAAP, be classified as current liabilities, other than current maturities in respect of the Loans.

"Default" means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

"Dividend Supplement Amount" means, as at any date of determination, an amount equal to (a) the lesser of (1) \$5,000,000 and (2) the cumulative excess of (A)

Restricted Equity Payments which the Company was permitted by Section

8.11(c) (but without giving effect to Section 8.11(c)(i)(A)(2) thereof) to pay during the period commencing on October 1, 1998 and ending on the date of determination over (B) the amount of Restricted Equity Payments actually paid by the Company during such period minus (b) the aggregate amount of incremental Restricted Equity Payments previously designated by the Company pursuant to Section 8.11(c)(i)(A)(2).

"Dollars", "dollars" and "\$" each mean lawful money of the United States.

"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 the 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.

"Domestic EBITDA" means, for any period, for the Company and its Domestic Subsidiaries on a consolidated basis, determined in accordance with GAAP, the sum of (a) the net income (or net loss) for such period, plus (b) all amounts treated as expenses for depreciation and interest and the amortization of intangibles of any kind to the extent included in the determination of such net income (or loss), plus (c) all accrued taxes on or measured by income to the extent included in the determination of such net income (or net loss), plus (d) all charges (or less any credits) in such period arising from LIFO valuation, plus (or less, if negative) (e) the amount of post-retirement health benefits accrued in such period less the amount of post-retirement health benefits paid in such period, in an amount of up to \$1,000,000 in any period, plus (f) all charges arising from the write down of fixed assets, severance payments and relocation expenses taken after the Closing Date with respect to Permitted Acquisitions, in an amount not to exceed \$10,000,000 in the aggregate, plus (g) all charges (or less any credits) arising from the write-off of intangible assets (without duplication of any amounts set forth in clause (b)); provided, however, that net income (or net loss) shall be computed (i) without giving effect to extraordinary losses or extraordinary gains, (ii) without regard to the net income (or net loss) of Leasing Subsidiaries or to the carrying value of the equity interest of the Company and its Domestic Subsidiaries in Leasing Subsidiaries, and (iii) without giving effect to any dividends or other distributions received by the Company and its Domestic Subsidiaries from Leasing Subsidiaries or any equity contributions made by the Company and its Domestic Subsidiaries to Leasing Subsidiaries; provided, further, that for purposes of computing Domestic EBITDA for purposes of Section 8.19, Acquisitions permitted hereunder made by the Company or any of its Subsidiaries during the four-quarter reference period shall be deemed to have occurred (and any Indebtedness incurred or assumed in connection therewith shall be deemed to have been incurred or assumed) on the first day of the four-quarter reference period and Domestic EBITDA for such reference period shall be calculated to include pro forma adjustments with respect to income and expense associated with the acquired assets or entity (all consistent with items (b) through (g) above).

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

"Domestic Tangible Assets" means, as of any date of determination, for the Company and its Domestic Subsidiaries which are Guarantors hereunder, on a consolidated basis, an amount equal to total assets of the Company and such Domestic Subsidiaries on that date determined in accordance with GAAP minus the Intangible Assets of the Company and such Domestic Subsidiaries on that date.

"Effective Amount" means (a) with respect to any Revolving Loans, Swing Line Loans, Fronted Offshore Currency Loans and Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans, Swing Line Loans, Fronted Offshore Currency Loans and Term Loans occurring on such date; and (b) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any Issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date. For purposes of subsection 2.09(a) the Effective Amount shall be determined without giving effect to any mandatory prepayments to be made under subsection 2.09(b).

"Eligible Assignee" means (a) a commercial bank 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 (the "OECD"), 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) as to the Term Loans, (i) an "accredited investor", as such term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (other than the Company or an Affiliate of the Company) or (ii) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership, trust or other entity) that is primarily engaged in the business of making, purchasing or otherwise investing in commercial loans; and (e) any other entity approved by the Company and the Agent.

"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 the Company or any Subsidiary or taken as collateral, or in connection with any operations of the Company.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, 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.

"Environmental Permits" has the meaning specified in subsection 6.12(b).

"ERISA" means the Employee Retirement Income Security Act of 1974, and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 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 the Company 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 which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company 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 Section 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 the Company or any ERISA Affiliate.

"Eurodollar Reserve Percentage" has the meaning specified in the definition of "Offshore Rate".

"Event of Default" means any of the events or circumstances specified in Section 9.01.

"Event of Loss" means, with respect to any property, any of the following: (a) any loss, destruction or damage of such property; (b) any institution of any proceedings for the condemnation or seizure of such property or for the exercise of any right of eminent domain; or (c) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property, or confiscation of such property or the requisition of the use of such property.

"Exchange Act" means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

"FDIC" means the Federal Deposit Insurance Corporation, and any Governmental Authority succeeding to any of its principal functions.

"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 published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to BofA on such day on such transactions as determined by the Agent.

"Fee Letter" has the meaning specified in subsection 2.14(a).

"Floor Plan Financing Facility" means any facility entered or to be entered into by the Company or any Subsidiary pursuant to which such person may (a) incur Indebtedness to purchase vehicles and/or related equipment from certain vendors for the prompt resale to customers in the ordinary course of business and (b) grant a security interest in such vehicles and/or related equipment to secure such borrowings.

"Foreign Subsidiary" means a Subsidiary which is not a Domestic Subsidiary.

"Foreign Subsidiary Guaranty Agreement" means that certain Foreign Subsidiary Guaranty dated as of the Second Restatement Date among the Agent and the Foreign Subsidiaries signatory thereto.

"Foreign Subsidiary Pledge Agreement" means that certain Pledge Agreement dated on or about the Second Restatement Date among the Agent and the Foreign Subsidiaries signatory thereto.

"Foreign Subsidiary Security Agreement" means that certain Foreign Subsidiary Security Agreement dated on or about the Second Restatement Date among the Agent and the Foreign Subsidiaries signatory thereto.

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

"Fronted Offshore Currency Commitment" means, for any Offshore Currency Fronting Lender for each Alternate Currency, the obligation of such Offshore Currency Fronting Lender to make Fronted Offshore Currency Loans in such Alternate Currency not exceeding the Dollar Equivalent set forth in the applicable Offshore Currency Addendum, as such amount may be modified from time to time pursuant to the terms of this Agreement and the applicable Offshore Currency Addendum.

"Fronted Offshore Currency Loan" means a loan made by an Offshore Currency Fronting Lender to a Borrower pursuant to Section 2.07 and an Offshore Currency Addendum.

"Fronted Offshore Currency Note" means a promissory note in such form as may be required by the applicable Offshore Currency Addendum.

"Fronted Offshore Currency Rate" means, for any day for any Fronted Offshore Currency Loan, the per annum rate of interest determined under or as set forth in the applicable Offshore Currency Addendum.

"Further Taxes" means any and all present or future taxes, levies, assessments, imposts, duties, deductions, fees, withholdings or similar charges (including, without limitation, net income taxes and franchise taxes), and all liabilities with respect thereto, imposed by any jurisdiction on account of amounts payable or paid pursuant to Section 4.01.

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

"GAAP" means generally accepted accounting principles set forth from time to time 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 agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination; provided, that, with respect to the financial statements of Foreign Subsidiaries "GAAP" shall mean the generally accepted accounting principles in the relevant foreign jurisdiction which are set forth from time to time in the opinions and pronouncements of the applicable accounting standards board (or similar agency) of such foreign jurisdiction, which are applicable to the circumstances as of the date of determination.

"Geesink Acquisition" means the acquisition of the capital stock of the Acquired Companies from Powell Duffryn Limited pursuant to the Purchase Agreement.

"Governmental Authority" means (a) any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing, and (b) the National Association of Insurance Commissioners.

"Guaranteed Creditors" shall mean and include the Agent, the Lenders and each Person (other than the Company or any of its Subsidiaries) which is a party to a Rate Swap Document if such Person is or at the time of entry into such Rate Swap Document was a Lender or an Affiliate of a Lender.

"Guaranteed Obligations" shall mean (a) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the principal and interest (whether such interest is allowed as a claim in a bankruptcy proceeding with respect to any Subsidiary Borrower or otherwise) on each Note issued by a Subsidiary Borrower to each Lender, and Loans made under this Agreement to any Subsidiary Borrower, together with all other Obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due) and liabilities (including, without limitation, indemnities, fees and interest thereon) of any Subsidiary Borrower to the Agent or any Lender now existing or hereafter incurred under, arising out of or in connection with this Agreement or any other Loan Documents and the due performance and compliance with all terms, conditions and agreements contained in the Loan Documents by any Subsidiary Borrower and (b) the full and prompt payment when due (whether by acceleration or otherwise) of all Obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code or similar proceeding under applicable law, would become due) of the Company or any Subsidiary owing under any Rate Swap Document entered into by the Company or any Subsidiary with any Lender or any Affiliate thereof (even if such Lender subsequently ceases to be a Lender under this Agreement for any reason) so long as such Lender or Affiliate participates in such Rate Swap Document and their subsequent assigns, if any, whether now in existence or hereafter arising, and the due performance and compliance with all terms, conditions and agreements contained therein.

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

"Guaranty Obligation" has the meaning specified in the definition of "Contingent Obligation."

"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.

"Honor Date" has the meaning specified in subsection 3.03(b).

"Indebtedness" of any Person means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business on ordinary terms); (c) all Contingent Obligations with respect to Surety Instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all obligations with respect to capital leases; (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (h) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (g) above; provided, that "Indebtedness" shall not include (x) any indebtedness incurred by the Company or any Subsidiary pursuant to any Floor Plan Financing Facility to the extent that it shall be non-interest bearing or (y) any obligations of the Company or its Subsidiaries in respect of customer advances received and held in the ordinary course of business. For all purposes of this Agreement, the Indebtedness of any Person shall include all recourse Indebtedness of any partnership or joint venture or limited liability company in which such Person is a general partner or a joint venturer or a member and as to which such Person is or may become directly liable.

"Indemnified Liabilities" has the meaning specified in Section 11.05.

"Indemnified Person" has the meaning specified in Section 11.05.

"Independent Auditor" has the meaning specified in subsection 7.01(a).

"Insolvency Proceeding" means, with respect to any Person, (a) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case, undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

"Intangible Assets" means assets that are considered to be intangible assets under GAAP.

"Interest Payment Date" means, as to any Offshore Rate Loan, the last day of each Interest Period applicable to such Loan and, as to any Base Rate Loan, the last Business Day of each calendar quarter; provided, however, that if any Interest Period for an Offshore Rate Loan exceeds three months, the date that falls three months after the beginning of such Interest Period and after each Interest Payment Date thereafter is also an Interest Payment Date.

"Interest Period" means, as to any Fronted Offshore Currency Loan, the Interest Period as set forth in, or determined in accordance with, the applicable Offshore Currency Addendum and, as to any other Offshore Rate Loan, the period commencing on the Borrowing Date of such Loan or on the Conversion/Continuation Date on which the Loan is converted into or continued as an Offshore Rate Loan, and ending on the date one, two, three or six months thereafter as selected by a Borrower in its Notice of Borrowing or Notice of Conversion/Continuation;

provided that:

(a) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period for any Term Loan shall extend beyond the maturity date of such Term Loan and no Interest Period for any Revolving Loan shall extend beyond January 31, 2006; and

(d) no Interest Period applicable to a Term Loan or portion thereof shall extend beyond any date upon which is due any scheduled principal payment in respect of the Term Loans unless the aggregate principal amount of Term Loans represented by Base Rate Loans, or by Offshore Rate Loans having Interest Periods that will expire on or before such date, equals or exceeds the amount of such principal payment.

"Investments" has the meaning specified in Section 8.04.

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

"Issuance Date" has the meaning specified in subsection 3.01(a).

"Issue" means, with respect to any Letter of Credit, to issue or to extend the expiry of, or to renew or increase the amount of, such Letter of Credit; and the terms "Issued," "Issuing" and "Issuance" have corresponding meanings.

"Issuer" means, in respect of each Letter of Credit, BofA or such other Revolving Lender selected by a Borrower which, in either case, has agreed to act as issuer of such Letter of Credit hereunder.

"Joint Venture" means a single-purpose corporation, partnership, limited liability company, joint venture or other similar legal arrangement (whether created by contract or conducted through a separate legal entity) now or hereafter formed by the Company or any of its Subsidiaries with another Person (or such a pre-existing entity in which the Company or any of its Subsidiaries acquires a minority interest) in order to conduct a common venture or enterprise with such Person.

"Judgment Currency" has the meaning specified in subsection 11.18.

"L/C Advance" means each Revolving Lender's participation in any L/C Borrowing in accordance with its Pro Rata Share.

"L/C Amendment Application" means an application form for amendment of outstanding standby or commercial documentary letters of credit as shall at any time be in use at the applicable Issuer, as such Issuer shall request.

"L/C Application" means an application form for issuances of standby or commercial documentary letters of credit as shall at any time be in use at the applicable Issuer, as such Issuer shall request.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which shall not have been reimbursed on the date when made nor converted into a Borrowing of Revolving Loans under subsection 3.03(c).

"L/C Commitment" means the commitment of the Issuers to Issue, and the commitment of the Revolving Lenders severally to participate in, Letters of Credit from time to time Issued or outstanding under Article III, in an aggregate amount not to exceed on any date (a) the Aggregate Revolving Loan Commitment less (b) the aggregate principal amount of Revolving Loans, Swing Line Loans and Fronted Offshore Currency Commitments then outstanding; provided that the L/C Commitment is a part of the Aggregate Revolving Credit Commitment, rather than a separate, independent commitment.

"L/C Obligations" means at any time the sum of (a) the aggregate undrawn amount of all Letters of Credit then outstanding, plus (b) the amount of all unreimbursed drawings under all Letters of Credit, including all outstanding L/C Borrowings.

"L/C-Related Documents" means the Letters of Credit, the L/C Applications, the L/C Amendment Applications and any other document relating to any Letter of Credit, including any standard form documents used by any Issuer for letter of credit issuances.

"Lease Assets" means, with respect to any lease, all of the following property and interests in property whether now existing or existing in the future or hereafter acquired or arising: (a) all vehicles or equipment manufactured or refurbished by the Company or any of its Subsidiaries (and truck chassis, cement block boom trucks and similar vehicles manufactured or refurbished by third parties) and acquired by a Leasing Subsidiary in connection with such assets being contemporaneously leased to a third party; (b) all leases and other contracts or agreements relating to the lease financing by a customer of vehicles or equipment manufactured or refurbished by the Company or any of its Subsidiaries; (c) all accounts receivable and other obligations incurred by lessees in connection with the foregoing, no matter how evidenced; (d) all rights to any vehicles or equipment subject to any of the foregoing after or in connection with creation of the foregoing, including, without limitation, returned or repossessed goods; (e) all reserves and credit balances with respect to any such lease contracts or agreements or lessees; (f) all letters of credit, security or guarantees for any of the foregoing; (g) all insurance policies or reports relating to any of the foregoing; and (h) all books and records relating to any of the foregoing.

"Leasing Subsidiary" means Oshkosh/McNeilus Financial Services, Inc., Oshkosh McNeilus Financial Services Partnership, Oshkosh Capital, L.L.C. and any other Subsidiary that is designated by the Board of Directors of the Company as a Leasing Subsidiary and that is exclusively engaged in Leasing Transactions and activities related thereto. If at any time any Leasing Subsidiary should engage in a material transaction or activity other than those described above, it shall thereafter cease to be a Leasing Subsidiary hereunder.

"Leasing Transaction" means (a) the formation of Leasing Subsidiaries (whether in one or a series of related transactions); (b) the sale or other disposition to a third party of Lease Assets or an interest therein; (c) the borrowing of money secured by Lease Assets; or (d) the sale or other disposition of Lease Assets or an interest therein to a Leasing Subsidiary followed by a financing transaction in connection with such sale or disposition of such Lease Assets (whether such financing transaction is effected by such Leasing Subsidiary or by a third party to whom such Leasing Subsidiary sells such Lease Assets or interest therein); provided, that in each of the foregoing, the Company or its Subsidiaries receive or have received in cash at least 95% of the aggregate sale price attributed to the vehicles and equipment that underlie the leases financed in such transaction.

"Lender" has the meaning specified in the introductory clause hereto. References to the "Lenders" shall include BofA, including in its capacity as an Issuer, as Offshore Currency Fronting Lender and as Swing Line Lender; for purposes of clarification only, to the extent that BofA may have any rights or obligations in addition to those of the Lenders due to its status as an Issuer, as Offshore Currency Fronting Lender or as Swing Line Lender, its status as such will be specifically referenced.

"Lending Office" means, as to any Lender, the office or offices of such Lender specified as its "Lending Office" or "Domestic Lending Office" or "Offshore Lending Office", as the case may be, on Schedule 11.02, or such other office or offices as such Lender may from time to time notify the Company and the Agent.

"Letters of Credit" means any letters of credit (whether standby letters of credit or commercial documentary letters of credit) Issued by the Issuers pursuant to Article III, including without limitation the existing letters of credit set forth on Schedule 1.01 hereto.

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

"Lien" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or similar interest of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming the owner of the asset to which such lien relates as debtor, under the Uniform Commercial Code or any comparable law) and any contingent or other agreement to provide any of the foregoing, but not including the interest of a lessor under an operating lease.

"Loan" means an extension of credit by a Lender to a Borrower under Article II or Article III in the form of a Revolving Loan, Term Loan, Swing Line Loan, Fronted Offshore Currency Loan or L/C Advance.

"Loan Documents" means this Agreement, any Notes, the Fee Letters, the L/C-Related Documents, the Collateral Documents, the Rate Swap Documents and all other documents delivered to the Agent or any Lender in connection herewith.

"local time" shall mean (a) with respect to Loans, the time of the office of the Agent or Offshore Currency Fronting Lender, as applicable, to which payment of each Loan is to be made, and (b) with respect to Letters of Credit, the time of the issuing office of the Issuer issuing such Letter of Credit.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the FRB.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties or condition (financial or otherwise) of the Company or the Company and its Subsidiaries taken as a whole; (b) a material impairment of the ability of the Company or any Subsidiary to perform under any Loan Document and to avoid any Event of Default; or (c) a material adverse effect

upon the legality, validity, binding effect or enforceability against the Company or any Subsidiary of any Loan Document.

"Material Subsidiary" means, at any time, any Subsidiary having at such time either (a) total (gross) revenues for the preceding four fiscal quarter period in excess of 2% of the total (gross) revenues of the Company and its Subsidiaries for such period or (b) a shareholder's equity, as of the last day of the preceding fiscal quarter, with a book value in excess of 4% of Net Worth, based in each case, to the extent applicable, upon the Company's most recent annual or quarterly financial statements delivered to the Agent pursuant to Section 7.01.

"Mortgage" means any deed of trust, mortgage, leasehold mortgage, assignment of rents or other document creating a Lien 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 a "multiemployer plan", within the meaning of Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes, is making, or is obligated to make contributions or, during the preceding three calendar years, has made, or been obligated to make, contributions.

"Net Proceeds" means (a) with respect to any Asset 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, or (b) with respect to any sale or issuance of publicly traded debt securities (or other Indebtedness issued pursuant to an indenture, including Indebtedness issued in a so called "144A Offering") of the Company or any Subsidiary, cash or readily marketable cash equivalents received (but excluding any other non-cash form) therefrom, whether at the time of such disposition, sale or issuance or subsequent thereto, net, in either case, 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 accrued as a liability as a consequence of such transactions and, in the case of an Asset Disposition, net of all payments made by the Company or any of its Subsidiaries on any Indebtedness which is secured by such assets pursuant to a Permitted 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 Asset Disposition, or by applicable law be repaid out of the proceeds from such Asset Disposition.

"Net Worth" means the shareholders' equity of the Company as determined in accordance with GAAP, but excluding any portion thereof in excess of \$23,000,000 attributable to the equity interest of the Company and its Subsidiaries in Leasing Subsidiaries.

"Non-Material Foreign Subsidiary" means a Foreign Subsidiary which is not a Material Subsidiary.

"Non-Surety L/C's" means letters of credit which are not Surety L/C's.

"Note" means a promissory note executed by a Borrower in favor of a Lender pursuant to subsection 2.02(b), or pursuant to the applicable Offshore Currency Addendum.

"Notice of Borrowing" means a notice in substantially the form of Exhibit A.

"Notice of Conversion/Continuation" means a notice in substantially the form of Exhibit B.

"Obligations" means all advances, debts, liabilities, obligations, covenants and duties arising under any Loan Document owing by the Company and each Subsidiary Borrower to any Lender, the Agent, or any Indemnified Person, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising.

"Offshore Currency" means at any time, Euro, Japanese Yen, French Francs, Pounds Sterling, German Deutschmarks, Canadian Dollars, Italian Lira, Swedish Kronor or Dutch Guilders and, from and after the time of such approval, any other currency requested by the Company and approved by each Lender in accordance with subsection 2.08(e).

"Offshore Currency Addendum" means an addendum substantially in the form of Exhibit I hereto with such modifications thereto as shall be approved by the applicable Offshore Currency Fronting Lender and the Agent.

"Offshore Currency Fronting Lender" means any Lender with a Revolving Loan Commitment (or any Affiliate, branch or agency thereof) to the extent it is party to an Offshore Currency Addendum as the "Offshore Currency Fronting Lender" thereunder. If any agency, branch or Affiliate of such Lender shall be a party to an Offshore Currency Addendum, such agency, branch or Affiliate shall, to the extent of any commitment extended and any Loans made by it, have all the rights of such Lender hereunder; provided, however, that such Lender shall to the exclusion of such agency, branch or Affiliate, continue to have all the voting rights vested in it by the terms hereof.

"Offshore Currency Loan" means any Offshore Rate Loan denominated in an Offshore Currency.

"Offshore Currency Sublimit" means \$100,000,000.

"Offshore Rate" means, for any Interest Period, with respect to Offshore Rate Loans comprising part of the same Borrowing or any Fronted Offshore Currency Loan, as

applicable, the rate of interest per annum (rounded upward to the next 1/100th of 1%) determined by the Agent as follows:

$$\text{Offshore Rate} = \frac{\text{IBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where,

"Eurodollar Reserve Percentage" means for any day for any Interest Period the maximum 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 FRB 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"); and

"IBOR" means the rate of interest per annum determined by the Agent as the rate at which deposits in the Applicable Currency in the approximate amount of BofA's Offshore Rate Loan for such Interest Period would be offered by BofA's Grand Cayman Branch, Grand Cayman B.W.I. (or such other office as may be designated for such purpose by BofA), to major banks in the offshore interbank market at their request at approximately 11:00 a.m. (local time) two Business Days prior to the commencement of such Interest Period.

The Offshore Rate shall be adjusted automatically as to all Offshore Rate Loans then outstanding as of the effective date of any change in the Eurodollar Reserve Percentage.

"Offshore Rate Loan" means a Loan that bears interest based on the Offshore Rate, which may be denominated in Dollars or any Offshore Currency.

"Organization Documents" means, for any corporation or organization, as applicable, the certificate or articles of incorporation or formation, the bylaws, limited partnership agreement, limited liability company agreement, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement or other similar agreement, and all applicable resolutions of the board of directors (or any committee thereof) or of any member or general partner of such corporation or organization.

"Other Taxes" means any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Loan Documents.

"Participant" has the meaning specified in subsection 11.08(e).

"PBGC" means the Pension Benefit Guaranty Corporation, or any Governmental Authority succeeding to any of its principal functions under ERISA.

"Pension Plan" means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA which the Company or any ERISA Affiliate sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or otherwise has any liability, 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 five (5) plan years.

"Permitted Liens" has the meaning specified in Section 8.01.

"Permitted Securitization" means any receivables financing program providing for the sale of accounts receivable (including rights in respect of capitalized leases) and related rights by the Company and its Subsidiaries to a Securitization Subsidiary in transactions purporting to be sales (and treated as sales for GAAP purposes), which Securitization Subsidiary shall finance the purchase of such assets by the sale, transfer, conveyance, lien or pledge of such assets to one or more limited purpose financing companies, special purpose entities and/or other financial institutions, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent.

"Permitted Swap Obligations" means all obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under Swap Contracts, 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 or assets held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person in conjunction with a securities repurchase program not otherwise prohibited hereunder, 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.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

"Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) which the Company or any ERISA Affiliate sponsors or maintains or to which the Company or any ERISA Affiliate makes, is making, or is obligated to make contributions or otherwise has any liability and includes any Pension Plan.

"Pledge Agreement" means that certain Stock and Note Pledge Agreement dated as of the Closing Date between the Company and the Agent.

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

"Pro Rata Revolving Share" means, as to any Revolving Lender,

(a) at any time at which the Aggregate Revolving Loan Commitment remains outstanding, the percentage equivalent (expressed as a decimal rounded to the ninth decimal place) at such time of such Lender's Revolving Loan Commitment divided by the Aggregate Revolving Loan Commitment, and (b) after the termination of the Aggregate Revolving Loan Commitment, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of the principal amount of such Lender's outstanding Revolving Loans (other than Swing Line Loans and Fronted Offshore Currency Loans) divided by the aggregate principal amount of the outstanding Revolving Loans (other than Swing Line Loans and Fronted Offshore Currency Loans) of all the Lenders.

"Pro Rata Share" means, as to any Lender, (a) in respect of a particular Loan and/or Commitment, (i) at any time at which the Commitments in respect of such Loan remain outstanding, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Lender's Commitment in respect of such Loan divided by the combined Commitments in respect of such Loan, and (ii) after the termination of the Commitments in respect of such Loan, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of the principal amount outstanding of such Loans held by such Lender divided by the aggregate principal amount outstanding of such Loans held by all Lenders, and (b) in respect of all Loans and/or Commitments, (i) at any time at which the Aggregate Commitment (or any portion thereof) remains outstanding, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Lender's Commitments in respect of all Loans (and if any Term Loans are outstanding, with the Term Loan A Commitment and Term Loan B Commitment, respectively, deemed to be outstanding to the extent of the principal amount of the related Term Loan which is then outstanding) divided by the Aggregate Commitment, and (b) after the termination of the Aggregate Commitment, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of the principal amount of such Lender's outstanding Loans (including such Lender's ratable share of outstanding Swing Line Loans, Fronted Offshore Currency Loans and L/C Obligations) divided by the aggregate principal amount of the outstanding Loans and L/C Obligations of all of the Lenders.

"Purchase Agreement" shall have the meaning set forth in Section 5.01(h)(i).

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

"Remarketing Agreements" means agreements guaranteeing the residual or future resale value of products manufactured and sold or leased by the Company or any Subsidiary.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

"Required Lenders" means at any time Lenders then holding at least 51% of the sum of (a) the then aggregate unpaid principal amount of the Term Loans, plus (b) the amount of the Aggregate Revolving Loan Commitment (or if the Revolving Loan Commitment has been terminated, then the aggregate principal amount outstanding of Revolving Loans, Swing Line Loans and Fronted Offshore Currency Loans, plus the outstanding amount of L/C Obligations); provided, that, if no principal amount of any Loan is then outstanding, then "Required Lenders" shall mean Lenders then having at least 51% of the Aggregate Revolving Loan Commitment.

"Required Revolving Lenders" means at any time Revolving Lenders then holding at least 51% of the then aggregate unpaid principal amount of the Revolving Loans, or, if no such principal amount is then outstanding, Revolving Lenders then having at least 51% of the Aggregate Revolving Loan Commitment.

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Responsible Officer" means the chief executive officer, the president, the chief financial officer, the treasurer or the corporate controller of the Company, or any other officer having substantially the same authority and responsibility.

"Restatement Date" means September 28, 2000.

"Restricted Equity Payments" has the meaning specified in Section 8.11.

"Revolving Lender" means any Lender having a Revolving Loan Commitment.

"Revolving Loan" has the meaning specified in subsection 2.01(c).

"Revolving Loan Commitment", as to each Revolving Lender, has the meaning specified in subsection 2.01(c).

"Revolving Termination Date" means the earlier to occur of:

(a) January 31, 2006; and

(b) the date on which the Aggregate Revolving Loan Commitment terminates in accordance with the provisions of this Agreement.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Offshore Currency, same day or other funds as may be determined by the Agent to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Offshore Currency.

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

"Second Restatement Date" means the date on which all conditions precedent set forth in Section 5.01 are satisfied or waived by the Required Lenders (or, in the case of subsection 5.01(e), waived by the Person entitled to receive such payment).

"Securitization Subsidiary" means a special purpose, bankruptcy remote Wholly-Owned Subsidiary of the Company which may be formed for the sole and exclusive purpose of engaging in activities in connection with the purchase, sale and financing of accounts receivable and related rights (or of rights as lessor under capitalized leases and related equipment and rights) in connection with and pursuant to a Permitted Securitization.

"Security Agreement" means that certain Security Agreement dated as of the Closing Date between the Company and the Agent.

"Senior Debt to Consolidated EBITDA Ratio" means as of any date, the ratio of (a) all Indebtedness of the Company and its Subsidiaries which is not contractually subordinated to other Indebtedness or obligations of such Persons, on a consolidated basis, as of the date of determination, to (b) Consolidated EBITDA for the period of four fiscal quarters most recently ended on or prior to the date of determination.

"Senior Subordinated Debt Documents" means the Senior Subordinated Indenture, the Senior Subordinated Notes and the other documents and instruments executed and delivered in connection therewith.

"Senior Subordinated Indenture" means that certain Indenture dated as of February 26, 1998 between the Company and the subsidiary guarantors party thereto and Firststar Trust Company.

"Senior Subordinated Notes" means those certain \$100,000,000 8.75% Senior Subordinated Notes of the Company due 2008.

"Solvent" means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(31) of the Bankruptcy Code and, in the alternative, for purposes of the Illinois Uniform Fraudulent Transfer Act; (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities, but applying the reasonably anticipated liability, after giving effect to payments under insurance policies and indemnity agreements which such Person reasonably expects to receive) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay

as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

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

"Stated Amount" means the stated or face amount of a Letter of Credit to the extent available at the time for drawing (subject to presentment of all requested documents), as the same may be increased or decreased from time to time in accordance with the terms of such Letter of Credit.

"Subsidiary" of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than 50% of the voting stock, membership interests or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof; provided, that for the purposes of Articles VII and VIII hereof (and any definitions incorporated therein) and of calculating the Leverage Ratio and Net Worth, "Subsidiary" shall exclude all Leasing Subsidiaries. Unless the context otherwise clearly requires, references herein to a "Subsidiary" refer to a Subsidiary of the Company.

"Subsidiary Borrower" means any Subsidiary that is designated as a Subsidiary Borrower by the Company pursuant to Section 2.20 with the consent of the Agent, which Subsidiary shall have delivered a Subsidiary Borrower Supplement in accordance with Section 2.20.

"Subsidiary Borrower Supplement" means a Subsidiary Borrower Supplement in the form of Exhibit H.

"Subsidiary Guaranty" means that certain Subsidiary Guaranty dated as of the Closing Date by certain of the Subsidiaries in favor of the Agent and the Lenders.

"Subsidiary Security Agreement" means that certain Subsidiary Security Agreement dated as of the Closing Date between the Guarantors and the Agent.

"Surety Bonds" means all bonds issued for the account of the Company or any Subsidiary to assure the performance thereby (or to the extent issued in the ordinary course of business, any other Person) under any contract entered into in the ordinary course of business.

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

"Surety L/C's" means letters of credit which are issued for the account of the Company or any Subsidiary to provide credit support, in the ordinary course of business, for (a) a contract bid by any such Person, (b) the performance by any such Person under any contract, (c) any warranty extended by any such Person and (d) the repayment of advance payments made to any such Person.

"Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing.

"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 by the Company 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 Commitment" means at any time, the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.05.

"Swing Line Lender" means BofA, in its capacity as provider of the Swing Line Loans.

"Swing Line Loan" means a Loan denominated in Dollars made by the Swing Line Lender.

"Swing Line Note" means a promissory note in substantially the form of Exhibit G.

"Swing Line Rate" means, at any time, for each Swing Line Loan, (a) the Offshore Rate in effect as of the Business Day of the making of a Swing Line Loan (or if extended, the date of such extension), assuming an Interest Period of one month, plus (b) the Applicable Offshore Rate Margin then in effect, plus (c) 50 basis points per annum.

"Taxes" means any and all present or future taxes, levies, assessments, imposts, duties, deductions, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of each Lender and the Agent, respectively, taxes imposed on or measured by its net income by the jurisdiction (or any political subdivision thereof)

under the laws of which such Lender or the Agent, as the case may be, is organized or maintains a lending office.

"Term Loan" means, collectively, Term Loan A and Term Loan B.

"Term Loan A" has the meaning specified in subsection 2.01(a).

"Term Loan A Commitment" means, as to each Lender, such Lender's Term Loan A Commitment, as specified on Schedule 2.01.

"Term Loan B" has the meaning specified in subsection 2.01(b).

"Term Loan B Commitment" means, as to each Lender, such Lender's Term Loan B Commitment, as specified on Schedule 2.01.

"Term Loan Commitment" means, as to each Lender, the aggregate amount of such Lender's Term Loan A Commitment and Term Loan B Commitment.

A "Type" of Loan means its status as either a Base Rate Loan or an Offshore Rate Loan.

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

"Unfunded Pension Liability" means the excess of a Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that 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.

"United States" and "U.S." each means the United States of America.

"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.

"Waivable Term Loan B Prepayment" has the meaning specified in subsection 2.11(f).

"Wholly-Owned Subsidiary" means any corporation in which (other than directors' qualifying shares required by law) 100% of the capital stock of each class having ordinary voting power, and 100% of the capital stock of every other class, in each case (or, in the case of Persons other than corporations, membership interests or other equity interests), at the time as of which any determination is being made, is owned, beneficially and of record, by the Company, or by one or more of the other Wholly-Owned Subsidiaries, or both.

"Working Capital" means (a) Current Assets, less (b) Current Liabilities.

1.02 Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof", "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(c) (i) The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(ii) The term "including" is not limiting and means "including without limitation."

(iii) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

(iv) The term "property" includes any kind of property or asset, real, personal or mixed, tangible or intangible.

(d) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(g) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Agent, the Company and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Agent merely because of the Agent's or Lenders' involvement in their preparation.

1.03 Accounting Principles. (a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP, consistently applied.

(b) References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of the Company.

(c) In the event that any changes in GAAP occur after the date of this Agreement and such changes result in a material variation in the method of calculation of financial covenants or other terms of this Agreement or in what Subsidiaries are consolidated for financial reporting purposes, then the Company, the Agent and the Lenders agree to amend such provisions of this Agreement so as to equitably reflect such changes so that the criteria for evaluating the Company's financial condition will be the same after such changes as if such changes had not occurred.

1.04 Currency Equivalents Generally. For all purposes of this Agreement (but not for purposes of the preparation of any financial statements, any schedules pertaining to Foreign Subsidiaries or any compliance certificates delivered pursuant hereto), the equivalent in any Offshore Currency or other currency of an amount in Dollars, and the equivalent in Dollars of an amount in any Offshore Currency or other currency, shall be determined at the Spot Rate.

ARTICLE II

THE CREDITS

2.01 Amounts and Terms of Commitments. (a) Term Loan A. The Company and the Lenders acknowledge the making of a single term loan in the aggregate principal amount of \$60,000,000 ("Term Loan A") on the Restatement Date in accordance with the terms of the Prior Credit Agreement. Prior to the Second Restatement Date, the Company has repaid or prepaid \$6,000,000 aggregate principal amount of Term Loan A and, accordingly, the Company and the Lenders acknowledge and agree that an aggregate principal amount of \$54,000,000 relating to Term Loan A shall continue to be outstanding as of the Second Restatement Date pursuant to the terms and conditions of this Agreement and the other Loan Documents (and having the Interest Periods applicable thereto as determined under the Prior Credit Agreement). Amounts borrowed as a Term Loan A which are repaid or prepaid by the Company may not be reborrowed.

(b) Term Loan B. Each Lender holding a Term Loan B Commitment severally agrees, on the terms and conditions set forth herein, to make a single loan in Dollars to the Company (each such loan, a "Term Loan B") on the Second Restatement Date (which loan may be made in multiple drawings on such Second Restatement Date, as directed by the Company) in an amount not to exceed such Lender's Term Loan B Commitment as set forth on Schedule 2.01. Amounts borrowed as a Term Loan B which are repaid or prepaid by the Company may not be reborrowed.

(c) The Revolving Credit. Each Revolving Lender severally agrees, on the terms and conditions set forth herein, to make loans to the Borrowers (each such loan, a "Revolving Loan") from time to time on any Business Day during the period from the Second Restatement Date to the Revolving Termination Date, in Dollars and/or one or more Offshore Currencies to the Company and in Offshore Currencies only to any Subsidiary Borrower, in an aggregate amount the Dollar Equivalent of which shall not exceed at any time outstanding the amount set forth on Schedule 2.01 (such amount, as the same may be reduced or increased under Section 2.09 or as a result of one or more assignments under Section 11.08, the Revolving Lender's "Revolving Loan Commitment"); provided, however, that, after giving effect to any Borrowing of Revolving Loans, the Dollar Equivalent of the Effective Amount of all Revolving

Loans and Swing Line Loans outstanding at such time plus the Dollar Equivalent of the Effective Amount of all L/C Obligations outstanding at such time, plus the aggregate amount of all Fronted Offshore Currency Commitments outstanding at such time, shall not at any time exceed the Aggregate Revolving Loan Commitment; provided further, that the Dollar Equivalent of the Effective Amount of the outstanding Revolving Loans of any Revolving Lender plus the participation of such Revolving Lender in the Dollar Equivalent of the Effective Amount of all L/C Obligations and such Revolving Lender's Pro Rata Revolving Share of any outstanding Swing Line Loans and of the aggregate amount of all Fronted Offshore Currency Commitments shall not at any time exceed such Revolving Lender's Revolving Loan Commitment; and provided further, that the sum of the Dollar Equivalent of the Effective Amount of the outstanding Revolving Loans denominated in an Offshore Currency, plus the aggregate amount of all Fronted Offshore Currency Commitments shall not exceed the Offshore Currency Sublimit. Within the limits of each Revolving Lender's Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this subsection 2.01(c), prepay under Section 2.10 and reborrow under this subsection 2.01(c).

2.02 Loan Accounts. (a) The Loans made by each Lender and the Letters of Credit Issued by the Issuer shall be evidenced by one or more accounts or records maintained by such Lender or Issuer, as the case may be, in the ordinary course of business. The accounts or records maintained by the Agent, the Issuer and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrowers and the Letters of Credit Issued for the account of the Company, and the interest and payments thereon. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Loans or any Letter of Credit.

(b) Each Borrower shall issue to each Lender notes ("Notes") to evidence such Lender's Loans (which shall be substantially in the form of Exhibit E with respect to Revolving Loans, Exhibit F with respect to Term Loans and Exhibit G with respect to Swing Line Loans and with respect to Fronted Offshore Currency Loans, shall be in such form as may be required by the applicable Offshore Currency Addendum). Each Lender may, instead of or in addition to maintaining a loan account, endorse on the schedule annexed to its Note(s) the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by a Borrower with respect thereto. Each such Lender is irrevocably authorized by the Borrowers to endorse its Note(s) and each Lender's record shall be conclusive absent manifest error; provided, however, that the failure of a Lender to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the obligations of any Borrower hereunder or under any such Note to such Lender.

2.03 Procedure for Borrowing. (a) Each Borrowing shall be made upon the applicable Borrower's irrevocable notice delivered to the Agent in the form of a Notice of Borrowing (which notice must be received by the Agent prior to noon (local time) (i) two Business Days prior to the requested Borrowing Date, in the case of Offshore Rate Loans denominated in Dollars, (ii) four Business Days prior to the requested Borrowing Date in the case of Offshore Rate Loans denominated in Offshore Currencies; and (iii) on the requested Borrowing Date, in the case of Base Rate Loans), specifying:

- (A) the amount of the Borrowing, which shall be in an aggregate minimum Dollar Equivalent amount of \$3,000,000 or any Dollar Equivalent multiple of \$250,000 in excess thereof;
- (B) the requested Borrowing Date, which shall be a Business Day;
- (C) the Type of Loans comprising the Borrowing;
- (D) with respect to Offshore Rate Loans, the duration of the Interest Period applicable to such Loans included in such notice. If the Notice of Borrowing fails to specify the duration of the Interest Period for any Borrowing comprised of Offshore Rate Loans, such Interest Period shall be three months;
- (E) with respect to Offshore Rate Loans, the Applicable Currency for the Borrowing; and
- (F) the identity of the Borrower requesting the Borrowing.
- (b) The Agent will promptly notify each applicable Lender of its receipt of any Notice of Borrowing and, in respect of Borrowings of Revolving Loans, of (i) the amount of such Revolving Lender's Pro Rata Revolving Share of that Borrowing and (ii) if such Borrowing is in an Offshore Currency, the aggregate Dollar Equivalent amount of the Borrowing and the applicable Spot Rate used by the Agent to determine the Dollar Equivalent amount. The Agent shall also give the Company prompt notice of the matters referred to in subpart (ii) of the preceding sentence.
- (c) Each Lender will make the amount of its Pro Rata Share of each Borrowing available to the Agent for the account of the applicable Borrower at the Agent's applicable Payment Office by 1:00 p.m. (local time) on the Borrowing Date requested by the Company in funds immediately available to the Agent. The proceeds of all such Loans will then be made available to the applicable Borrower by the Agent at such office by crediting the account of such Borrower on the books of BofA with the aggregate of the amounts made available to the Agent by the Lenders and in like funds as received by the Agent.
- (d) After giving effect to any Borrowing, unless the Agent shall otherwise consent, there may not be more than 12 different Interest Periods in effect.
- (e) Each Borrower hereby authorizes the Lenders and the Agent to accept Notices of Borrowing based on telephonic notices made by any person or persons the Agent or any Lender in good faith believes to be acting on behalf of such Borrower. Each Borrower agrees to deliver promptly to the Agent a written confirmation of each telephonic notice, signed by a Responsible Officer or an authorized designee. If the written confirmation differs in any material respect from the action taken by the Agent and the Lenders, the records of the Agent and the Lenders shall govern absent manifest error.

2.04 Conversion and Continuation Elections. (a) Each Borrower may, with respect to Loans other than Fronted Offshore Currency Loans, upon irrevocable notice to the Agent in accordance with subsection 2.04(b):

(i) elect, as of any Business Day, in the case of Base Rate Loans, or as of the last day of the applicable Interest Period, in the case of Offshore Rate Loans made to the Company, to convert any such Loans (or any part thereof in a Dollar Equivalent amount not less than \$3,000,000 or that is in an integral multiple of the Dollar Equivalent of \$250,000 in excess thereof) into Base Rate Loans; or

(ii) elect as of the last day of the applicable Interest Period, to continue any Revolving Loans or Term Loans having Interest Periods expiring on such day (or any part thereof in an amount not less than the Dollar Equivalent of \$3,000,000, or that is in an integral multiple of the Dollar Equivalent of \$250,000 in excess thereof);

provided, that if at any time the aggregate amount of Offshore Rate Loans in respect of any Borrowing by all Borrowers is reduced, by payment, prepayment, or conversion of part thereof to be less than the Dollar Equivalent of \$3,000,000, such Offshore Rate Loans shall be assigned to and assumed by the Company, if borrowed by a Borrower other than the Company, and then may, upon written notice by the Company delivered to the Agent and the Swing Line Lender concurrent with its notice of prepayment and compliance with Section 2.06, be converted into Swing Line Loans, or, in the absence of such a conversion, shall automatically convert into Base Rate Loans, and on and after such date the right of the Company to continue such Loans as, and convert such Loans into, Offshore Rate Loans shall terminate.

(b) Each Borrower shall deliver a Notice of Conversion/Continuation to be received by the Agent not later than 10:30 a.m. (local time) at least (i) two Business Days in advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as Offshore Rate Loans denominated in Dollars; (ii) four Business Days in advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as Offshore Rate Loans denominated in an Offshore Currency; and (iii) on the Conversion/Continuation Date, if the Loans are to be converted into Base Rate Loans, specifying:

(A) the proposed Conversion/Continuation Date;

(B) the aggregate amount of Loans to be converted or continued;

(C) the Type of Loans resulting from the proposed conversion or continuation;

(D) other than in the case of conversions into Base Rate Loans, the duration of the requested Interest Period; and

(E) if converted into Offshore Rate Loans denominated in an Offshore Currency, the Applicable Currency in which such converted Loans are to be denominated.

- (c) If upon the expiration of any Interest Period applicable to Offshore Rate Loans, a Borrower has failed to select timely a new Interest Period to be applicable to such Offshore Rate Loans, as the case may be, then
- (i) if no Default or Event of Default then exists, such Borrower shall be deemed to have elected to continue such Loans as Offshore Rate Loans to itself denominated in the same Offshore Currency and having a one-month Interest Period effective as of the expiration date of such expiring Interest Period and (ii) if any Default or Event of Default then exists, such Borrower shall be deemed to have elected to convert such Offshore Rate Loans into Base Rate Loans made to the Company and denominated in Dollars effective as of the expiration date of such expiring Interest Period.
- (d) The Agent will promptly notify each applicable Lender of its receipt of a Notice of Conversion/Continuation, or, if no timely notice is provided by a Borrower, the Agent will promptly notify each applicable Lender of the details of any automatic conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans with respect to which the notice was given held by each Lender.
- (e) Unless the Required Lenders otherwise consent, during the existence of a Default or Event of Default, no Borrower may elect to have a Loan converted into or continued as an Offshore Rate Loan.
- (f) After giving effect to any conversion or continuation of Loans, unless the Agent shall otherwise consent, there may not be more than 12 different Interest Periods in effect.
- (g) Each Borrower hereby authorizes the Lenders and the Agent to accept Notices of Conversion/Continuation based on telephonic notices made by any person or persons the Agent or any Lender in good faith believes to be acting on behalf of such Borrower. Each Borrower agrees to deliver promptly to the Agent a written confirmation of each telephonic notice, signed by a Responsible Officer or an authorized designee. If the written confirmation differs in any material respect from the action taken by the Agent and the Lenders, the records of the Agent and the Lenders shall govern absent manifest error.

2.05 The Swing Line Loans. Subject to the terms and conditions hereof, the Swing Line Lender agrees to make Swing Line Loans denominated in Dollars to the Company from time to time prior to the Revolving Termination Date in an aggregate principal amount at any one time outstanding not to exceed \$20,000,000; provided, that after giving effect to any such Swing Line Loan, the Dollar Equivalent of the Effective Amount of all Revolving Loans, Swing Line Loans, Fronted Offshore Currency Commitments and L/C Obligations at such time would not exceed the Aggregate Revolving Loan Commitment at such time. Prior to the Revolving Termination Date, the Company may use the Swing Line Commitment by borrowing, prepaying the Swing Line Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. All Swing Line Loans shall bear interest at the Swing Line Rate and shall not be entitled to be converted into Loans that bear interest at any other rate.

2.06 Procedure for Swing Line Loans. (a) The Company may borrow under the Swing Line Commitment on any Business Day until the Revolving Termination Date; provided, that the Company shall give the Swing Line Lender irrevocable written notice signed by a Responsible Officer or an authorized designee (which notice must be received by the Swing Line

Lender prior to 11:00 a.m. (local time)) with a copy to the Agent specifying the amount of the requested Swing Line Loan, which shall be in a minimum amount of \$100,000 or a whole multiple of \$100,000 in excess thereof. The proceeds of the Swing Line Loan will be made available by the Swing Line Lender to the Company in immediately available funds at the office of the Swing Line Lender by 1:00 p.m. (local time) on the date of such notice. The Company may at any time and from time to time, prepay the Swing Line Loans, in whole or in part, without premium or penalty, by notifying the Swing Line Lender prior to 11:00 a.m. (local time) on any Business Day of the date and amount of prepayment with a copy to the Agent. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein. Partial prepayments shall be in an aggregate principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof.

(b) If any Swing Line Loan shall remain outstanding at 11:00 a.m. (local time) on the fifth Business Day following the date of such Swing Line Loan and if by such time on such fifth Business Day the Agent shall have received neither (i) a Notice of Borrowing delivered by the Company pursuant to

Section 2.03 requesting that Revolving Loans be made pursuant to subsection 2.01(b) on the immediately succeeding Business Day in an amount at least equal to the principal amount of such Swing Line Loan for the purpose of refunding such Swing Line Loan nor (ii) any other notice satisfactory to the Agent indicating the Company's intent to repay such Swing Line Loan on or before the immediately succeeding Business Day with funds obtained from other sources or to extend such Swing Line Loan, then on such Business Day the Swing Line Lender shall (and on any Business Day the Swing Line Lender in its sole discretion may), on behalf of the Company (which hereby irrevocably directs the Swing Line Lender to act on its behalf) request the Agent to notify each Revolving Lender to make a Base Rate Loan in an amount equal to such Revolving Lender's Pro Rata Revolving Share of (A) in the case of such a request which is required to be made, the amount of the relevant Swing Line Loan and (B) in the case of such a discretionary request, the aggregate principal amount of the Swing Line Loans outstanding on the date such notice is given; provided, that absent notice by the Company to the contrary by such time on such fifth Business Day, the Company shall be deemed to have requested, at the end of such five Business Day period, that each outstanding Swing Line Loan be extended for an additional period of five Business Days, so long as the conditions specified in Section 5.02 would be satisfied at the beginning of each such additional period, treating each such extension as if it were the making of a new Loan. Unless any of the events described in subsection 9.01(f) or (g) shall have occurred with respect to the Company (in which event the procedures of paragraph (d) of this Section 2.06 shall apply) each Revolving Lender shall make the proceeds of its Revolving Loan available to the Agent for the account of the Swing Line Lender at the Agent's Payment Office in funds immediately available prior to 1:00 p.m. (local time) on the Business Day next succeeding the date such notice is given. The proceeds of such Revolving Loans shall be immediately applied to repay the outstanding Swing Line Loans. Effective on the day such Revolving Loans are made, the portion of the Swing Line Loans so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note. The Company shall pay to the Swing Line Lender, promptly following the Swing Line Lender's demand, the amount of its outstanding Swing Line Loans to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such outstanding Swing Line Loans.

(c) Notwithstanding anything herein to the contrary, the Swing Line Lender (i) shall not be obligated to make any Swing Line Loan if the conditions set forth in Article V have not been satisfied and (ii) shall not make any requested Swing Line Loan if, prior to 11:00 a.m. (local time) on the date of such requested Swing Line Loan, it has received a written notice from the Agent or any Revolving Lender directing it not to make further Swing Line Loans because one or more of the conditions specified in Article V are not then satisfied.

(d) If prior to the making of a Revolving Loan required to be made by subsection 2.06(b) an Event of Default described in subsection 9.01(f) or 9.01(g) shall have occurred and be continuing with respect to the Company, each Revolving Lender will, on the date such Revolving Loan was to have been made pursuant to the notice described in subsection 2.06(b), purchase an undivided participating interest in the outstanding Swing Line Loans in an amount equal to its Pro Rata Revolving Share of the aggregate principal amount of Swing Line Loans then outstanding. Each Revolving Lender will immediately transfer to the Agent for the benefit of the Swing Line Lender, in immediately available funds, the amount of its participation.

(e) Whenever, at any time after a Revolving Lender has purchased a participating interest in a Swing Line Loan, the Swing Line Lender receives any payment on account thereof, the Swing Line Lender will distribute to the Agent for delivery to each Revolving Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's participating interest was outstanding and funded); provided, however, that in the event that such payment received by the Swing Line Lender is required to be returned, such Revolving Lender will return to the Agent for delivery to the Swing Line Lender any portion thereof previously distributed by the Swing Line Lender to it.

(f) Each Lender's obligation to make the Revolving Loans referred to in subsection 2.06(b) and to purchase participating interests pursuant to subsection 2.06(d) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender or the Company may have against the Swing Line Lender, the Company or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default, (iii) any adverse change in the condition (financial or otherwise) of the Company, (iv) any breach of this Agreement or any other Loan Document by the Company, any Subsidiary or any other Lender, or

(v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

2.07 The Fronted Offshore Currency Loans.

(a) Upon the satisfaction of the conditions precedent set forth in Article V hereof and set forth in the applicable Offshore Currency Addendum, from and including the later of the date of this Agreement and the date of execution of the applicable Offshore Currency Addendum and prior to the termination of the Aggregate Revolving Loan Commitment (or such earlier termination date as shall be specified in or pursuant to the applicable Offshore Currency Addendum), each Offshore Currency Fronting Lender agrees, on the terms and conditions set forth in this Agreement and in the applicable Offshore Currency Addendum, to make Fronted Offshore Currency Loans under such Offshore Currency Addendum to the applicable Borrower

party to such Offshore Currency Addendum from time to time in the applicable Alternate Currency, in an aggregate principal Effective Amount with a Dollar Equivalent not to exceed each such Offshore Currency Fronting Lender's applicable Fronted Offshore Currency Commitment (the amount of which shall in no event be, if not zero, less than the Dollar Equivalent of \$10,000,000 or an increment of \$1,000,000 in excess thereof); provided, that, at no time shall the Dollar Equivalent of the Fronted Offshore Currency Loans for any specific Alternate Currency exceed the maximum amount specified as the maximum amount for such Alternate Currency in the applicable Offshore Currency Addendum other than as a result of currency fluctuations. Subject to the terms of this Agreement and the applicable Offshore Currency Addendum, the applicable Borrowers may borrow, repay and reborrow Fronted Offshore Currency Loans in the applicable Alternate Currency at any time prior to the termination of the Aggregate Revolving Loan Commitment (or such earlier termination date as shall be specified in or pursuant to the applicable Offshore Currency Addendum). On the termination of the Aggregate Revolving Loan Commitment (or such earlier termination date as shall be specified in or pursuant to the applicable Offshore Currency Addendum), the outstanding principal balance of the Fronted Offshore Currency Loans shall be paid in full by the applicable Borrower and prior to the termination of the Aggregate Revolving Loan Commitment (or such earlier termination date as shall be specified in or pursuant to the applicable Offshore Currency Addendum) prepayments of the Fronted Offshore Currency Loans shall be made by the applicable Borrower if and to the extent required by Section 2.11(e). For the avoidance of doubt, it is understood that no Lender shall have any obligation hereunder to execute an Offshore Currency Addendum and so to become an Offshore Currency Fronting Lender.

(b) The applicable Borrower shall pay the Offshore Currency Fronting Lender a fronting fee in respect of each Fronted Offshore Currency Loan in accordance with the Offshore Currency Addendum (or other agreement with the Offshore Currency Fronting Lender).

(c) Except as otherwise required by applicable law, in no event shall any Offshore Currency Fronting Lender have the right to accelerate the Fronted Offshore Currency Loans outstanding under any Offshore Currency Addendum prior to the stated termination date in respect thereof, except that each Offshore Currency Fronting Lender shall have such rights upon an acceleration of the Loans and a termination of the Revolving Loan Commitments pursuant to Article IX.

(d) Each Offshore Currency Fronting Lender shall furnish to the Agent not less frequently than monthly, at the end of each calendar quarter, and at any other time upon the request of the Agent, a statement setting forth the outstanding Fronted Offshore Currency Loans made and repaid during the period since the last such report under such Offshore Currency Addendum.

(e) Immediately and automatically upon the occurrence of an Event of Default under Sections 9.1(a), (f) or (g), each Revolving Lender shall be deemed to have unconditionally and irrevocably purchased from the applicable Offshore Currency Fronting Lender, without recourse or warranty, an undivided interest in and participation in each Fronted Offshore Currency Loan ratably in an amount equal to such Lender's Pro Rata Revolving Share of the amount of principal and accrued interest of such Loan, and immediately and automatically all Fronted Offshore Currency Loans shall be converted to and redenominated in Dollars equal to

the Dollar Equivalent of each such Fronted Offshore Currency Loan determined as of the date of such conversion; provided, that to the extent such conversion shall occur other than at the end of an Interest Period, the applicable Borrower shall pay to the applicable Offshore Currency Fronting Lender, all losses and breakage costs related thereto in accordance with Section 4.04. Each of the Lenders shall pay to the applicable Offshore Currency Fronting Lender not later than two (2) Business Days following a request for payment from such Offshore Currency Fronting Lender, in Dollars, an amount equal to the undivided interest in and participation in the Fronted Offshore Currency Loan purchased by such Lender pursuant to this Section 2.07(e). In the event that any Lender fails to make payment to the applicable Offshore Currency Fronting Lender of any amount due under this Section 2.07(e), the Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Agent receives from such Lender an amount sufficient to discharge such Lender's payment obligation as prescribed in this

Section 2.07(e) together with interest thereon at the Federal Funds Rate for each day during the period commencing on the date of demand by the applicable Offshore Currency Fronting Lender and ending on the date such obligation is fully satisfied. The Agent will promptly remit all payments received as provided above to the applicable Offshore Currency Fronting Lender. In consideration of the risk participations prescribed in this Section 2.07(e), each Lender shall receive, from the accrued interest paid for periods prior to the conversion of any Fronted Offshore Currency Loan as described above by the applicable Borrower on each Fronted Offshore Currency Loan, a fee equal to such Lender's Pro Rata Revolving Share of the Applicable Offshore Rate Margin component of the interest accrued on such Loan, as in effect from time to time during the period such interest accrued. Such portion of the interest paid by the applicable Borrower on Fronted Offshore Currency Loans to the applicable Offshore Currency Fronting Lender shall be paid as promptly as possible by such Offshore Currency Fronting Lender to the Agent, and the Agent shall as promptly as possible convert such amount into Dollars at the spot rate of exchange in accordance with its normal banking practices and apply such resulting amount ratably among the Lenders (including the Offshore Currency Fronting Lenders) in proportion to their Pro Rata Revolving Share.

(f) Whenever, at any time after a Revolving Lender has purchased a participating interest in a Fronted Offshore Currency Loan, the Offshore Currency Fronting Lender receives any payment on account thereof, the Offshore Currency Fronting Lender will distribute to the Agent for delivery to each Revolving Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's participating interest was outstanding and funded); provided, however, that in the event that such payment received by the Offshore Currency Fronting Lender is required to be returned, such Revolving Lender will return to the Agent for delivery to the Offshore Currency Fronting Lender any portion thereof previously distributed by the Agent or the Offshore Currency Fronting Lender to it.

(g) Each Revolving Lender's obligation to purchase the participating interests referred to in subsection 2.07(e) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender or any Borrower may have against the Offshore Currency Fronting Lender, the Company or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default, (iii) any

adverse change in the condition (financial or otherwise) of any Borrower, (iv) any breach of this Agreement or any other Loan Document by any Borrower, any Guarantor or any other Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(h) The specification of payment of Fronted Offshore Currency Loans in the related Alternate Currency at a specific place pursuant to this Agreement is of the essence. Such Alternate Currency shall, subject to Section 2.07, be the currency of account and payment of such Loans under this Agreement and the applicable Offshore Currency Addendum. Notwithstanding anything in this Agreement, the obligation of the applicable Borrower in respect of such Loans shall not be discharged by an amount paid in any other currency or at another place, whether pursuant to a judgment or otherwise, to the extent the amount so paid, on prompt conversion into the applicable Alternate Currency and transfer to such Lender under normal banking procedure, does not yield the amount of such Alternate Currency due under this Agreement or the applicable Offshore Currency Addendum. In the event that any payment, whether pursuant to a judgment or otherwise, upon conversion and transfer, does not result in payment of the amount of such Alternate Currency due under this Agreement or the applicable Offshore Currency Addendum, such Lender shall have an independent cause of action against each of the Borrowers for the currency deficit. In the event that any payment, upon conversion and transfer, results in payment in excess of the amount of such Alternate Currency due under this Agreement or the applicable Offshore Currency Addendum, such Lender shall refund such excess to the applicable Borrower.

2.08 Utilization of Commitments in Offshore Currencies.

(a) The Agent will determine the Dollar Equivalent amount with respect to any (i) Borrowing comprised of Offshore Currency Loans as of the requested Borrowing Date, (ii) outstanding Offshore Currency Loans as of the last Banking Day of each month, and (iii) outstanding Offshore Currency Loans as of any redenomination date pursuant to this Section 2.08 or Section 4.05 (each such date under clauses (i) through (iii) a "Computation Date"). The Agent will provide the Company with the amount determined pursuant to the foregoing clause (ii) promptly following the end of each month. Upon receipt of any Notice of Borrowing, the Agent will promptly notify each Revolving Lender thereof and of the amount of such Lender's Pro Rata Revolving Share of the Borrowing. In the case of a Borrowing comprised of Offshore Currency Loans, such notice will provide the approximate amount of each Lender's Pro Rata Revolving Share of the Borrowing, and the Agent will, upon the determination of the Dollar Equivalent amount of the Borrowing as specified in the Notice of Borrowing, promptly notify each Revolving Lender of the exact amount of such Revolving Lender's Pro Rata Revolving Share of the Borrowing.

(b) In the case of a proposed Borrowing comprised of Offshore Currency Loans, the Revolving Lenders shall be under no obligation to make Offshore Currency Loans in the requested Offshore Currency as part of such Borrowing if the Agent has received notice from any of the Revolving Lenders by 3:00 p.m. (local time) three Business Days prior to the day of such Borrowing that such Lender cannot provide Loans in the requested Offshore Currency, in which event the Agent will give notice to the Company no later than 9:00 a.m. (local time) on the third Business Day prior to the requested date of such Borrowing that the Borrowing in the

requested Offshore Currency is not then available, no such Borrowing shall be made and any request for a Revolving Loan in such Offshore Currency shall be deemed withdrawn and shall otherwise be without effect.

(c) In the case of a proposed continuation of Offshore Currency Loans for an additional Interest Period pursuant to Section 2.04, the Revolving Lenders shall be under no obligation to continue such Offshore Currency Loans if the Agent has received notice from any of the Revolving Lenders by 4:00 p.m. (local time) three Business Days prior to the day of such continuation that such Revolving Lender cannot continue to provide Loans in the Offshore Currency, in which event the Agent will give notice to the Company not later than 9:00 a.m. (local time) on the second Business Day prior to the requested date of such continuation that the continuation of such Offshore Currency Loans in the Offshore Currency is not then available, and notice thereof also will be given promptly by the Agent to the Lenders. If the Agent shall have so notified the Company that any such continuation of Offshore Currency Loans is not then available, any Notice of Continuation/Conversion with respect thereto shall be deemed withdrawn and such Offshore Currency Loans shall be redenominated into Base Rate Loans assumed by the Company in Dollars with effect from the last day of the Interest Period with respect to any such Offshore Currency Loans. The Agent will promptly notify the Company and the Revolving Lenders of any such redenomination and in such notice by the Agent to each Revolving Lender the Agent will state the aggregate Dollar Equivalent amount of the redenominated Offshore Currency Loans assumed by the Company as of the Computation Date with respect thereto and such Revolving Lender's Pro Rata Share thereof.

(d) Notwithstanding anything herein to the contrary, during the existence of an Event of Default, upon the request of the Required Revolving Lenders, all or any part of any outstanding Offshore Currency Loans shall be redenominated and converted into Base Rate Loans in Dollars assumed by the Company with effect from the last day of the Interest Period with respect to any such Offshore Currency Loans. The Agent will promptly notify the applicable Borrower of any such redenomination and conversion request.

(e) The Company shall be entitled to request that Revolving Loans hereunder shall also be permitted to be made in any other lawful currency constituting a eurocurrency (other than Dollars), in addition to the currencies specified in the definition of "Offshore Currency" herein, that in the opinion of each Revolving Lender is at such time freely traded in the offshore interbank foreign exchange markets and is freely transferable and freely convertible into Dollars (an "Agreed Alternative Currency"). The Company shall deliver to the Agent any request for designation of an Agreed Alternative Currency in accordance with Section 11.02, to be received by the Agent not later than noon (local time) at least ten Business Days in advance of the date of any Borrowing hereunder proposed to be made in such Agreed Alternative Currency. Upon receipt of any such request the Agent will promptly notify the Revolving Lenders thereof, and each Revolving Lender will use its best efforts to respond to such request within two Business Days of receipt thereof. Each Revolving Lender may grant or accept such request in its sole discretion. The Agent will promptly notify the Company of the acceptance or rejection of any such request.

2.09 Voluntary Termination, Reduction or Increase of Revolving Loan Commitments. (a) The Company may, upon not less than five Business Days' prior notice to the Agent,

terminate the Revolving Loan Commitments, or permanently reduce the Revolving Loan Commitments by an aggregate minimum amount of \$10,000,000 or any multiple of \$1,000,000 in excess thereof; unless, after giving effect thereto and to any prepayments of Loans made on the effective date thereof, (a) the Dollar Equivalent of the Effective Amount of all Revolving Loans, Swing Line Loans and L/C Obligations together plus the amount of all outstanding Fronted Offshore Currency Commitments would exceed the amount of the Aggregate Revolving Loan Commitment then in effect, or (b) the Dollar Equivalent of the Effective Amount of all L/C Obligations then outstanding would exceed the L/C Commitment. Once reduced in accordance with this Section, the Revolving Loan Commitments may not be increased. Any reduction of the Revolving Loan Commitments shall be applied to each Revolving Lender according to its Pro Rata Revolving Share. All accrued commitment and letter of credit fees to, but not including, the effective date of any reduction or termination of Revolving Loan Commitments, shall be paid on the effective date of such reduction or termination.

(b) At no time shall the sum of the Swing Line Commitment and the Fronted Offshore Currency Commitment(s) exceed the Aggregate Revolving Loan Commitment, and any reduction of the Aggregate Revolving Loan Commitment which reduces the Aggregate Revolving Loan Commitment below the then-current sum of the Swing Line Commitment and the Fronted Offshore Currency Commitments shall result in an automatic pro rata corresponding reduction of each of the Swing Line Commitment and the Fronted Offshore Currency Commitment(s) so that the sum thereof is equal to the amount of the Aggregate Revolving Loan Commitment, as so reduced, without any action on the part of the Swing Line Lender or the Fronted Offshore Currency Lender(s). At no time shall either the sum of the Swing Line Commitment plus any Fronted Offshore Currency Commitment of BofA exceed the Revolving Loan Commitment of BofA, and any reduction of the Aggregate Revolving Loan Commitment which reduces the Revolving Loan Commitment of BofA below the then-current sum of the Swing Line Commitment plus the Fronted Offshore Currency Commitment of BofA shall result in an automatic corresponding reduction of the Swing Line Commitment and the Fronted Offshore Currency Commitment of BofA, on a ratable basis, to the amount of the Revolving Loan Commitment of BofA, as so reduced, without any action on the part of BofA.

(c) The Company may, at its option, on two occasions within two years of the Second Restatement Date, seek to increase the Aggregate Revolving Loan Commitment by up to an aggregate amount of \$50,000,000 (resulting in a maximum Aggregate Revolving Loan Commitment of \$220,000,000) upon at least three

(3) Business Days' prior written notice to the Agent, which notice shall specify the amount of any such increase and shall be delivered at a time when no Default or Event of Default has occurred and is continuing. The Company may, after giving such notice, offer the increase (which may be declined by any Lender in its sole discretion) in the Aggregate Revolving Loan Commitment on either a ratable basis to the Lenders or on a non pro-rata basis to one or more Lenders and/or to other banks or entities reasonably acceptable to the Agent. No increase in the Aggregate Revolving Loan Commitment shall become effective until the existing or new Lenders extending such incremental Revolving Loan Commitment amount and the Company shall have delivered to the Agent a document in form reasonably satisfactory to the Agent pursuant to which any such existing Revolving Lender states the amount of its Revolving Loan Commitment increase, any such new Revolving Lender states its Revolving Loan Commitment amount and agrees to

assume and accept the obligations and rights of a Revolving Lender hereunder and the Company accepts such incremental Revolving Loan Commitments. The Revolving Lenders (new or existing) shall accept an assignment from the existing Revolving Lenders, and the existing Revolving Lenders shall make an assignment to the new or existing Revolving Lender accepting a new or increased Revolving Loan Commitment, of an interest (or participation interest, as applicable) in all Revolving Loans and other credit exposure in respect of the Aggregate Revolving Loan Commitment such that, after giving effect thereto, all Revolving Loans and all such other credit exposure are held ratably by the Revolving Lenders in proportion to their respective Revolving Loan Commitments. Assignments pursuant to the preceding sentence shall be made in exchange for the principal amount assigned plus accrued and unpaid interest and commitment and other fees. The Company shall make any payments under Section 4.04 resulting from such assignments.

2.10 Optional Prepayments. Subject to Section 4.04, any Borrower may, at any time or from time to time, upon not less than two (2) Business Days' irrevocable notice to the Agent, in respect of Offshore Rate Loans (other than Fronted Offshore Currency Loans, except as otherwise provided in the applicable Offshore Currency Addendum), and in respect of Base Rate Loans, by not later than 10:30 a.m. (local time) on the prepayment date, prepay Loans in whole or in part, in minimum amounts equal to the Dollar Equivalent of \$3,000,000 or any Dollar Equivalent multiple of \$250,000 in excess thereof. Such notice of prepayment shall specify the date and amount of such prepayment, which Loans are to be prepaid and the Type(s) of such Loans to be prepaid. The Agent will promptly notify each Lender of its receipt of any such notice, and of such Lender's Pro Rata Share of such prepayment. If such notice is given by any Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together, in the case of Offshore Rate Loans, with accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 4.04. Optional prepayments of any Term Loan shall be applied first, in the order of maturity, to payments due on such Term Loan in the next 12 months, and then ratably to all remaining payments on such Term Loan.

2.11 Mandatory Prepayments of Loans. (a) If on any date the Effective Amount of L/C Obligations exceeds the L/C Commitment, the Company shall Cash Collateralize on such date the outstanding Letters of Credit in an amount equal to the excess of the maximum amount then available to be drawn under the Letters of Credit over the Aggregate L/C Commitment. Subject to Section 4.04, if on any date, after giving effect to any Cash Collateralization made on such date pursuant to the preceding sentence, the Dollar Equivalent of the Effective Amount of all Revolving Loans, Swing Line Loans and Fronted Offshore Currency Loans then outstanding plus the Effective Amount of all L/C Obligations exceeds the Aggregate Revolving Loan Commitment, the Borrowers shall immediately, and without notice or demand, prepay the outstanding principal amount of the Revolving Loans, Swing Line Loans, Fronted Offshore Currency Loans and/or L/C Advances by an amount equal to such excess.

(b) Within five (5) Business Days after the receipt thereof, the Company shall prepay the Term Loans and reduce the Aggregate Revolving Loan Commitment in an amount equal to 100% of the Net Proceeds realized upon the issuance by the Company or any Subsidiary of any publicly traded debt securities (or other Indebtedness issued pursuant to an indenture,

including Indebtedness issued in a so called "144A Offering") other than any subordinated debt securities issued pursuant to Section 8.05(g) or Indebtedness incurred pursuant to Section 8.05(i).

(c) Within five (5) Business Days after the end of each fiscal quarter, the Company shall prepay the Term Loans and reduce the Aggregate Revolving Loan Commitment in an amount equal to 100% of the sum of (a) the Net Proceeds realized upon all Asset Dispositions (excluding those described in

Section 8.02 (a)-(c) and (e)-(m) and those which, together with all related Asset Dispositions, result in Net Proceeds of less than \$2,000,000) made by the Company or any Subsidiary in such fiscal quarter, (b) the insurance proceeds received by the Company or any Subsidiary in such fiscal quarter following a casualty involving such Person's Property and (c) the payments received by the Company or any Subsidiary in such fiscal quarter from a condemnation of such Person's Property, aggregating in excess of \$250,000, to the extent not applied (or committed to be applied) within 90 days after the consummation or receipt thereof, as applicable, to the purchase of other assets that are not classified as current assets under GAAP and are used or useful in the business of the Company and its Subsidiaries. Notwithstanding the foregoing, the prepayment due in respect of any sales pursuant to a Permitted Securitization shall not exceed the program limit for such Permitted Securitization.

(d) The amount of any prepayment pursuant to paragraph (b) or (c) shall be applied (i) first to the Term Loans (on a ratable basis among the outstanding Term Loans) as described in the last sentence of Section 2.10, and then (ii) to permanently reduce the Aggregate Revolving Loan Commitment. The Company shall use its best efforts to notify the Agent and each Lender of the amount of any required prepayment at least three (3) Business Days before it is made.

(e) If at any time of calculation by the Agent (whether pursuant to Section 2.08(a) or otherwise) (i) the Dollar Equivalent of the Effective Amount of all Revolving Loans denominated in an Offshore Currency plus the outstanding amount of all Fronted Offshore Currency Commitments exceeds either the Aggregate Revolving Loan Commitment or the Offshore Currency Sublimit as a result of fluctuations in currency exchange rates, the Borrowers shall, within one (1) Business Day after receipt of notice thereof, prepay Loans in an aggregate amount such that after giving effect thereto any such excess is eliminated; or (ii) the Dollar Equivalent of the Effective Amount of the aggregate outstanding principal amount of Fronted Offshore Currency Loans in the same Alternate Currency exceeds the aggregate Fronted Offshore Currency Commitments with respect thereto as a result of fluctuations in currency exchange rates, the applicable Borrowers shall, within one (1) Business Day after receipt of notice thereof, prepay Fronted Offshore Currency Loans in such Alternate Currency in an aggregate amount such that after giving effect thereto the Dollar Equivalent of the Effective Amount of all Fronted Offshore Currency Loans in such Alternate Currency is less than or equal to the aggregate Fronted Offshore Currency Commitments with respect thereto.

(f) Waiver of Certain Mandatory Prepayments by Term Loan B Lenders. Notwithstanding anything to the contrary contained in this Section 2.11 or elsewhere in this Agreement, any Lender with an outstanding Term Loan B shall have the option to waive a mandatory prepayment of such Term Loan pursuant to subsection 2.11(b) or (c) (each such prepayment, a "Waivable Mandatory Term Loan B Prepayment") upon the terms and provisions

set forth in this subsection 2.11(f). In the event any such Lender desires to waive such Lender's right to receive any such Waivable Mandatory Term Loan B Prepayment in whole or in part, such Lender shall so advise the Agent no later than the close of business two (2) Business Days prior to the date on which such prepayment is to occur, which notice shall also include the amount, if any, such Lender desires to receive in respect of such prepayment. If any such Lender does not provide such notice by such date, it will be deemed not to have waived any part of such prepayment. If any such Lender does not specify an amount it wishes to receive, it will be deemed to have accepted one hundred percent (100%) of the total amount otherwise payable to it. In the event that any such Lender waives all or part of such right to receive any such Waivable Mandatory Term Loan B Prepayment, the Agent shall apply one hundred percent (100%) of the amount so waived by such Lender to Term Loan A in accordance with Section 2.11; provided, that if the aggregate amount of the applicable prepayment requested to be waived by such Lenders would exceed the amount required to prepay Term Loan A in full, then such requested waived amounts shall be allocated ratably among the waiving Term Loan B Lenders, based upon the amounts of the requested waivers; provided, further, that no such waiver requests shall be honored following the prepayment in full of Term Loan A.

2.12 Repayment. (a) Term Loans. The Company shall repay the Term Loans on each date set forth below as follows (each a "Principal Payment Date"):

Date	Term Loan A Payment	Term Loan B Payment
----	-----	-----
12/31/00	\$2,000,000	-
3/31/01	\$2,000,000	-
6/30/01	\$2,000,000	-
9/30/01	\$2,000,000	\$350,000
12/31/01	\$2,500,000	\$350,000
3/31/02	\$2,500,000	\$350,000
6/30/02	\$2,500,000	\$350,000
9/30/02	\$2,500,000	\$350,000
12/31/02	\$3,000,000	\$350,000
3/31/03	\$3,000,000	\$350,000
6/30/03	\$3,000,000	\$350,000
9/30/03	\$3,000,000	\$350,000
12/31/03	\$3,500,000	\$350,000
3/31/04	\$3,500,000	\$350,000
6/30/04	\$3,500,000	\$350,000
9/30/04	\$3,500,000	\$350,000
12/31/04	\$3,500,000	\$350,000
3/31/05	\$3,500,000	\$350,000
6/30/05	\$3,500,000	\$350,000
9/30/05	\$3,500,000	\$350,000
12/31/05	\$1,000,000	\$350,000
1/31/06	\$1,000,000	-
3/31/06	-	\$350,000
6/30/06	-	\$350,000

Date	Term Loan A Payment	Term Loan B Payment
-----	-----	-----
9/30/06	-	\$350,000
12/31/06	-	\$350,000
1/31/07	-	\$132,300,000
Total	\$60,000,000	\$140,000,000

(b) The Revolving Credit. The Borrowers shall repay to the Lenders on the Revolving Termination Date the aggregate principal amount of Revolving Loans outstanding on such date.

2.13 Interest. (a) Each Revolving Loan and Term Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the Offshore Rate or the Base Rate, as the case may be (and subject to the Borrowers' right to convert to other Types of Loans under Section 2.04), plus the Applicable Offshore Rate Margin or the Applicable Base Rate Margin, as applicable. Each Fronted Offshore Currency Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the applicable Fronted Offshore Currency Rate.

(b) Interest on each Revolving Loan and Term Loan shall be paid in arrears on each Interest Payment Date. Interest on Base Rate Loans shall also be paid on the date of any payment (including prepayment) in full thereof. Interest on Offshore Rate Loans shall also be paid on the date of any prepayment of Loans under Section 2.10 or 2.11 for the portion of the Loans so prepaid and upon payment (including prepayment) in full thereof. During the existence of any Event of Default, interest on all Loans shall be paid on demand of the Agent at the request or with the consent of the Required Lenders.

(c) Notwithstanding subsection 2.13(a), while any Event of Default exists or after acceleration, the applicable Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by law) on the principal amount of all outstanding Obligations, at a rate per annum which is determined by adding 2% per annum to the applicable interest rate otherwise then in effect for such Loans; provided, however, that on and after the expiration of any Interest Period applicable to any Offshore Rate Loan outstanding on the date of occurrence of such Event of Default or acceleration, the principal amount of such Loan shall, during the continuation of such Event of Default or after acceleration, bear interest at a rate per annum equal to the Base Rate plus the Applicable Base Rate Margin plus 2%.

(d) Anything herein to the contrary notwithstanding, the obligations of any Borrower to any Lender hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by such Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by such Lender, and in such event such Borrower shall pay such Lender interest at the highest rate permitted by applicable law.

2.14 Fees. In addition to certain fees described in Section 3.08:

(a) Arrangement, Agency Fees, Amendment Fees, Upfront Fees. The Company shall pay such fees to the Agent and the Arranger as are required by the letter agreement ("Fee Letter") between the Company and the Arranger and Agent dated June 20, 2001.

(b) Commitment Fees. The Company shall pay to the Agent for the account of each Revolving Lender a commitment fee on the average daily unused portion of such Revolving Lender's Revolving Loan Commitment, computed on a quarterly basis in arrears on the last Business Day of each calendar quarter based upon the daily utilization for that quarter as calculated by the Agent, equal to the Applicable Commitment Fee Percentage. For purposes of calculating utilization under this subsection, the Revolving Loan Commitments shall be deemed used to the extent of the Effective Amount of Revolving Loans then outstanding (excluding any outstanding Swing Line Loans), plus the Effective Amount of the Dollar Equivalent of the Fronted Offshore Currency Loans then outstanding plus the Effective Amount of L/C Obligations then outstanding. Such commitment fee shall accrue from the date hereof to the Revolving Termination Date and shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter commencing on September 30, 2000 through the Revolving Termination Date, with the final payment to be made on the Revolving Termination Date; provided that, in connection with any reduction or termination of Revolving Loan Commitments under Section 2.09, the accrued commitment fee calculated for the period ending on such date shall also be paid on the date of such reduction or termination, with the following quarterly payment being calculated on the basis of the period from such reduction or termination date to such quarterly payment date. The commitment fees provided in this subsection shall accrue at all times after the above-mentioned commencement date, including at any time during which one or more conditions in Article V are not met.

2.15 Computation of Fees and Interest. (a) All computations of interest for Base Rate Loans when the Base Rate is determined by BofA's "reference rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof to the last day thereof.

(b) Each determination of an interest rate by the Agent shall be conclusive and binding on the applicable Borrower and the Lenders in the absence of manifest error.

2.16 Payments by the Borrowers. (a) All payments to be made by the Borrowers shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrowers shall be made to the Agent for the account of the Lenders at the Agent's Payment Office, and shall be made in dollars and in immediately available funds, no later than 11:00 a.m. (local time) on the date specified herein. The Agent will promptly distribute to each Lender its applicable share of such payment in like funds as received which, except as otherwise expressly provided herein, shall be based upon such Lender's Pro Rata Share of the Loans in respect of which such prepayment has been made. Any payment received by the

Agent later than 1:00 p.m. (local time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) Unless the Agent receives notice from a Borrower prior to the date on which any payment is due to the Lenders that such Borrower will not make such payment in full as and when required, the Agent may assume that such Borrower has made such payment in full to the Agent on such date in immediately available funds and the Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent a Borrower has not made such payment in full to the Agent, each Lender shall repay to the Agent on demand such amount distributed to such Lender, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Lender until the date repaid.

2.17 Payments by the Lenders to the Agent. (a) Except as otherwise expressly provided in Section 2.08 with respect to Fronted Offshore Currency Loans, unless the Agent receives notice from a Lender on or prior to the Second Restatement Date or, with respect to any Borrowing after the Second Restatement Date, at least one Business Day prior to the date of such Borrowing, that such Lender will not make available as and when required hereunder to the Agent for the account of a Borrower the amount of that Lender's Pro Rata Share of the Borrowing, the Agent may assume that each Lender has made such amount available to the Agent in immediately available funds on the Borrowing Date and the Agent may (but shall not be so required), in reliance upon such assumption, make available to such Borrower on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to the Agent in immediately available funds and the Agent in such circumstances has made available to such Borrower such amount, that Lender shall on the Business Day following such Borrowing Date make such amount available to the Agent, together with interest at the Federal Funds Rate for each day during such period. A notice of the Agent submitted to any Lender with respect to amounts owing under this subsection (a) shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Agent shall constitute such Lender's Loan on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to the Agent on the Business Day following the Borrowing Date, the Agent will notify applicable Borrower of such failure to fund and, upon demand by the Agent, such Borrower shall pay such amount to the Agent for the Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing.

(b) The failure of any Lender to make any Loan on any Borrowing Date shall not relieve any other Lender of any obligation hereunder to make a Loan on such Borrowing Date, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on any Borrowing Date.

2.18 Sharing of Payments, Etc. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder), such Lender shall immediately (a) notify the Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender, such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Each Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 11.10) with respect to such participation as fully as if such Lender were the direct creditor of such Borrower in the amount of such participation. The Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Lenders following any such purchases or repayments.

2.19 Security and Subsidiary Guaranty. (a) All Obligations of the Borrowers and the Guarantors under this Agreement, the Notes and all other Loan Documents shall be secured in accordance with the Collateral Documents.

(b) All Obligations of the Borrowers under this Agreement, each of the Notes delivered by it and all other Loan Documents shall be unconditionally guaranteed by the Guarantors pursuant to the Subsidiary Guaranty, and all Obligations of the Subsidiary Borrowers under this Agreement, each of the Notes delivered by them and all other Loan Documents shall be unconditionally guaranteed by the Company pursuant to the terms of Section 12 hereof.

2.20 Subsidiary Borrowers. On or after the Second Restatement Date, with the consent of the Agent, the Company may designate any Subsidiary (other than any Securitization Subsidiary and any captive insurance company Subsidiary) as a Subsidiary Borrower by delivery to the Agent of a Subsidiary Borrower Supplement executed by such Subsidiary and the Company, together with Notes in favor of each Revolving Lender and, if applicable, a Fronted Offshore Currency Note in favor of the Offshore Currency Fronting Lender, and upon such delivery such Subsidiary shall for all purposes of this Agreement be a Subsidiary Borrower and party to this Agreement. As soon as practicable upon receipt of a Subsidiary Borrower Supplement, the Agent will deliver a copy thereof to each Lender. So long as the principal of and interest on all Loans made to any Subsidiary Borrowers under this Agreement shall have been paid in full and all other obligations of such Subsidiary Borrower shall have been fully performed, such Subsidiary Borrower may, upon not less than five Business Days' prior written notice to the Agent (which shall promptly notify the Lenders thereof), terminate its status as a "Subsidiary Borrower".

ARTICLE III

THE LETTERS OF CREDIT

3.01 The Letter of Credit Subfacility. (a) On the terms and conditions set forth herein (i) the Issuer agrees, (A) from time to time on any Business Day, during the period from the Second Restatement Date to the day which is five days prior to the Revolving Termination Date, to issue Letters of Credit for the account of the Company in an aggregate Stated Amount in Dollars or any Alternate Currency at any one time that, the Dollar Equivalent of which, together with the aggregate Dollar Equivalent of the Stated Amount of all other outstanding Letters of Credit issued pursuant hereto, does not exceed the L/C Commitment, and to amend or renew Letters of Credit previously issued by it, in accordance with subsections 3.02(c) and 3.02(d), and (B) to honor drafts under the Letters of Credit; and (ii) the Revolving Lenders severally agree to participate in Letters of Credit Issued for the account of the Company; provided, that the Issuer shall not be obligated to Issue, and no Revolving Lender shall be obligated to participate in, any Letter of Credit if as of the date of Issuance of such Letter of Credit (the "Issuance Date") (1) the Dollar Equivalent of the Effective Amount of all L/C Obligations, plus the Dollar Equivalent of the Effective Amount of all Revolving Loans and Swing Line Loans plus the aggregate amount of all Fronted Offshore Currency Commitments exceeds the Aggregate Revolving Loan Commitment or (2) the participation of any Lender in the Dollar Equivalent of the Effective Amount of all L/C Obligations plus the Effective Amount of the Revolving Loans of such Lender and such Revolving Lender's Pro Rata Revolving Share of any outstanding Swing Line Loans and Fronted Offshore Currency Commitments exceeds such Lender's Commitment. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company's ability to obtain Letters of Credit shall be fully revolving, and, accordingly, the Company may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and reimbursed.

(b) The Issuer is under no obligation to, and shall not, Issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuer from Issuing such Letter of Credit, or any Requirement of Law applicable to the Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuer shall prohibit, or request that the Issuer refrain from, the Issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuer in good faith deems material to it;

(ii) the Issuer has received written notice from any Revolving Lender, the Agent or the Company, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article V is not then satisfied;

(iii) the expiry date of any requested Letter of Credit is (A) more than 720 days after the date of Issuance, unless (1) the Required Revolving Lenders have approved such expiry date in writing or (2) such Letter of Credit is a Surety L/C, or (B) after the date which is five days prior to the Revolving Termination Date, unless all of the Revolving Lenders have approved such expiry date in writing;

(iv) the expiry date of any requested Letter of Credit is prior to the maturity date of any financial obligation to be supported by the requested Letter of Credit;

(v) any requested Letter of Credit does not provide for drafts, or is not otherwise in form and substance acceptable to the Issuer, or the Issuance of a Letter of Credit shall violate any applicable policies of the Issuer; or

(vi) such Letter of Credit is to be denominated in a currency other than Dollars or any Offshore Currency.

3.02 Issuance, Amendment and Renewal of Letters of Credit. (a) Each Letter of Credit shall be issued upon the irrevocable written request of the Company received by the Issuer (with a copy sent by the Company to the Agent) at least three days (or such shorter time as the Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of issuance; provided, that five days' prior notice (or such shorter time as the Issuer may agree in a particular instance in its sole discretion) shall be required in respect of each Letter of Credit to be denominated in an Offshore Currency. Each such request for issuance of a Letter of Credit shall be by facsimile, confirmed immediately in an original writing (if required by the Issuer), in the form of an L/C Application (or such other form as shall be acceptable to the Issuer), or shall be by online letter of credit software acceptable to the Issuer, and shall specify in form and detail satisfactory to the Issuer: (i) the proposed date of issuance of the Letter of Credit (which shall be a Business Day); (ii) the face amount of the Letter of Credit; (iii) the expiry date of the Letter of Credit;

(iv) the name and address of the beneficiary thereof; (v) the documents to be presented by the beneficiary of the Letter of Credit in case of any drawing thereunder; (vi) the full text of any certificate to be presented by the beneficiary in case of any drawing thereunder; (vii) the currency in which such Letter of Credit is to be denominated, which shall be Dollars or an Offshore Currency; and (viii) such other matters as the Issuer may require.

(b) At least two Business Days prior to the Issuance of any Letter of Credit (or such shorter time as the Agent may agree in a particular instance in its sole discretion), the Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of the L/C Application or L/C Amendment Application from the Company and, if not, the Issuer will provide the Agent with a copy thereof. Unless the Issuer has received notice on or before the Business Day immediately preceding the date the Issuer is to issue a requested Letter of Credit from the Agent (A) directing the Issuer not to issue such Letter of Credit because such issuance is not then permitted under subsection 3.01(a) as a result of the limitations set forth in clauses (1) through (3) thereof or subsection 3.01(b)(ii); or (B) that one or more conditions specified in Article V are not then satisfied; then, subject to the terms and conditions hereof, the Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company in accordance with the Issuer's usual and customary business practices.

(c) From time to time while a Letter of Credit is outstanding and prior to the Revolving Termination Date, the Issuer will, upon the written request of the Company received by the Issuer (with a copy sent by the Company to the Agent) at least three days (or such shorter time as the Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of amendment, amend any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by facsimile, confirmed immediately in an original writing (if required by the Issuer), made in the form of an L/C Amendment Application or through on-line letter of credit software acceptable to the Issuer and shall specify in form and detail satisfactory to the Issuer: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the Issuer may require. The Issuer shall be under no obligation to amend any Letter of Credit if: (A) the Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms of this Agreement; or (B) the beneficiary of any such letter of Credit does not accept the proposed amendment to the Letter of Credit. The Agent will promptly notify the Revolving Lenders of the receipt by it of any L/C Application or L/C Amendment Application.

(d) The Issuer and the Lenders agree that, while a Letter of Credit is outstanding and prior to the Revolving Termination Date, at the option of the Company and upon the written request of the Company received by the Issuer (with a copy sent by the Company to the Agent) at least three days (or such shorter time as the Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of notification of renewal, the Issuer shall be entitled to authorize the automatic renewal of any Letter of Credit issued by it. Each such request for renewal of a Letter of Credit shall be made by facsimile, confirmed immediately in an original writing (if required by the Issuer), in the form of an L/C Amendment Application or through on-line letter of credit software acceptable to the Issuer, and shall specify in form and detail satisfactory to the Issuer: (i) the Letter of Credit to be renewed; (ii) the proposed date of notification of renewal of the Letter of Credit (which shall be a Business Day); (iii) the revised expiry date of the Letter of Credit; and (iv) such other matters as the Issuer may require. The Issuer shall be under no obligation so to renew any Letter of Credit if: (A) the Issuer would have no obligation at such time to issue or amend such Letter of Credit in its renewed form under the terms of this Agreement; or (B) the beneficiary of any such Letter of Credit does not accept the proposed renewal of the Letter of Credit. If any outstanding Letter of Credit shall provide that it shall be automatically renewed unless the beneficiary thereof receives notice from the Issuer that such Letter of Credit shall not be renewed, and if at the time of renewal the Issuer would be entitled to authorize the automatic renewal of such Letter of Credit in accordance with this subsection 3.02(e) upon the request of the Company but the Issuer shall not have received any L/C Amendment Application from the Company with respect to such renewal or other written direction by the Company with respect thereto, the Issuer shall nonetheless be permitted to allow such Letter of Credit to renew, and the Company and the Lenders hereby authorize such renewal, and, accordingly, the Issuer shall be deemed to have received an L/C Amendment Application from the Company requesting such renewal.

(e) The Issuer may, at its election (or as required by the Agent at the direction of the Required Revolving Lenders), deliver any notices of termination or other communications to any Letter of Credit beneficiary or transferee, and take any other action as necessary or

appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the date which is five days prior to the Revolving Termination Date.

(f) This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(g) The Issuer will also deliver to the Agent, concurrently or promptly following its delivery of a Letter of Credit, or amendment to or renewal of a Letter of Credit, to an advising bank or a beneficiary, a true and complete copy of each such Letter of Credit or amendment to or renewal of a Letter of Credit.

3.03 Risk Participations, Drawings and Reimbursements. (a) Immediately upon the Issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuer a participation in such Letter of Credit and each drawing thereunder in an amount equal to the product of (i) the Pro Rata Revolving Share of such Revolving Lender, times (ii) the Dollar Equivalent of the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing, respectively. For purposes of subsection 2.01(d), each Issuance of a Letter of Credit shall be deemed to utilize the Revolving Loan Commitment of each Revolving Lender by an amount equal to the amount of such participation.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, the Issuer will promptly notify the Company. The Company shall reimburse the Issuer prior to 11:00 a.m. (local time), on each date that any amount is paid by the Issuer under any Letter of Credit (each such date, an "Honor Date"), in an amount in Dollars equal to the Dollar Equivalent of the amount so paid by the Issuer. In the event the Company fails to reimburse the Issuer in Dollars for the Dollar Equivalent of the full amount of any drawing under any Letter of Credit by 11:00 a.m. (local time) on the Honor Date, the Issuer will promptly notify the Agent and the Agent will promptly notify each Lender thereof, and the Company shall be deemed to have requested that Base Rate Loans in an amount equal to such unreimbursed amount be made by the Revolving Lenders to be disbursed on the Honor Date under such Letter of Credit, subject to the amount of the unutilized portion of the Aggregate Revolving Loan Commitment and subject to the conditions set forth in Section 5.02. Any notice given by the Issuer or the Agent pursuant to this subsection 3.03(b) may be oral if immediately confirmed in writing (including by facsimile); provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(c) Each Revolving Lender shall upon any notice pursuant to subsection 3.03(b) make available to the Agent for the account of the relevant Issuer an amount in Dollars and in immediately available funds equal to its Pro Rata Revolving Share of the Dollar Equivalent of the amount of the drawing, whereupon the participating Revolving Lenders shall (subject to subsection 3.03(d)) each be deemed to have made a Revolving Loan consisting of a Base Rate Loan to the Company in that amount. If any Revolving Lender so notified fails to make available to the Agent for the account of the Issuer the amount of such Revolving Lender's Pro Rata Share of the Dollar Equivalent of the amount of the drawing by no later than 12:00 noon (local time) on the Honor Date, then interest shall accrue on such Revolving Lender's

obligation to make such payment, from the Honor Date to the date such Revolving Lender makes such payment, at a rate per annum equal to the Federal Funds Rate in effect from time to time during such period. The Agent will promptly give notice of the occurrence of the Honor Date, but failure of the Agent to give any such notice on the Honor Date or in sufficient time to enable any Revolving Lender to effect such payment on such date shall not relieve such Revolving Lender from its obligations under this Section 3.03.

(d) With respect to any unreimbursed drawing that is not converted into Revolving Loans consisting of Base Rate Loans to the Company in whole or in part, because of the Company's failure to satisfy the conditions set forth in Section 5.02 or for any other reason, the Company shall be deemed to have incurred from the Issuer an L/C Borrowing in the Dollar Equivalent of the amount of such drawing, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at a rate per annum equal to the Base Rate, plus the Applicable Base Rate Margin, plus 2.0% per annum, and each Revolving Lender's payment to the Issuer pursuant to subsection 3.03(c) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Lender in satisfaction of its participation obligation under this Section 3.03.

(e) Each Revolving Lender's obligation in accordance with this Agreement to make the Revolving Loans or L/C Advances, as contemplated by this

Section 3.03, as a result of a drawing under a Letter of Credit, shall be absolute and unconditional and without recourse to the Issuer and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender may have against the Issuer, the Company or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or a Material Adverse Effect; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make Revolving Loans under this Section 3.03 is subject to the conditions set forth in Section 5.02.

3.04 Repayment of Participations. (a) Upon (and only upon) receipt by the Agent for the account of the Issuer of immediately available funds in Dollars from the Company (i) in reimbursement of any payment made by the Issuer under the Letter of Credit with respect to which any Revolving Lender has paid the Agent for the account of the Issuer for such Revolving Lender's participation in the Letter of Credit pursuant to Section 3.03 or (ii) in payment of interest thereon, the Agent will promptly pay to each Revolving Lender, in the same funds as those received by the Agent for the account of the Issuer, the amount of such Revolving Lender's Pro Rata Revolving Share of such funds, and the Issuer shall receive the amount of the Pro Rata Revolving Share of such funds of any Revolving Lender that did not so pay the Agent for the account of the Issuer.

(b) If the Agent or the Issuer is required at any time to return to the Company, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by the Company to the Agent for the account of the Issuer pursuant to subsection 3.04(a) in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each Revolving Lender shall, on demand of the Agent, forthwith return to the Agent or the Issuer the amount of its Pro Rata Revolving Share of any amounts so returned by the Agent or the Issuer plus interest thereon from the date such demand is made to the date

such amounts are returned by such Revolving Lender to the Agent or the Issuer, at a rate per annum equal to the Federal Funds Rate in effect from time to time.

3.05 Role of the Issuer. (a) Each Lender and the Company agree that, in paying any drawing under a Letter of Credit, the Issuer shall not have any responsibility to obtain any document (other than any sight draft and certificates 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.

(b) No Agent-Related Person nor any of the respective correspondents, participants or assignees of the Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders (including the Required Lenders or Required Revolving Lenders, as applicable); (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any L/C-Related Document.

(c) The Company 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 the Company's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. No Agent-Related Person, nor any of the respective correspondents, participants or assignees of the Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (vii) of Section 3.06; provided, however, anything in such clauses to the contrary notwithstanding, that the Company may have a claim against the Issuer, and the Issuer may be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Company which the Company proves were caused by the Issuer's willful misconduct or gross negligence or the Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing: (i) the Issuer 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 (ii) the Issuer 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.

3.06 Obligations Absolute. The obligations of the Company under this Agreement and any L/C-Related Document to reimburse the Issuer for a drawing under a Letter of Credit, and to repay any L/C Borrowing and any drawing under a Letter of Credit converted into Revolving Loans, shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C-Related Document under all circumstances, including the following:

(i) any lack of validity or enforceability of this Agreement or any L/C-Related Document;

- (ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Company in respect of any Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the L/C-Related Documents;
- (iii) the existence of any claim, set-off, defense or other right that the Company may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C-Related Documents or any unrelated transaction;
- (iv) any draft, demand, certificate or other document presented under any 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; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit;
- (v) any payment by the Issuer under any Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of any Letter of Credit; or any payment made by the Issuer under any 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 any Letter of Credit, including any arising in connection with any Insolvency Proceeding;
- (vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the obligations of the Company in respect of any Letter of Credit; or
- (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or a guarantor.

3.07 Cash Collateral Pledge. Upon (i) the request of the Agent, (A) if the Issuer has honored any full or partial drawing request on any Letter of Credit and such drawing has resulted in an L/C Borrowing hereunder, or (B) if, as of the Revolving Termination Date, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn, (ii) the occurrence of the circumstances described in subsection 2.09 (a) requiring the Company to Cash Collateralize Letters of Credit, or (iii) the termination of the Aggregate Revolving Loan Commitment, then, the Company shall immediately Cash Collateralize the L/C Obligations in an amount in Dollars equal to the Dollar Equivalent of the L/C Obligations.

3.08 Letter of Credit Fees. (a) The Company shall pay to the Agent for the account of each of the Revolving Lenders a letter of credit fee with respect to the Letters of Credit equal to the Applicable Offshore Rate Margin times the Dollar Equivalent of the average daily maximum amount available to be drawn of the outstanding Letters of Credit, computed on a quarterly basis

in arrears on the last Business Day of each calendar quarter based upon Letters of Credit outstanding for that quarter as calculated by the Agent. Such letter of credit fees shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter during which Letters of Credit are outstanding, commencing on the first such quarterly date to occur after the Second Restatement Date, through the Revolving Termination Date (or such later date upon which the outstanding Letters of Credit shall expire), with the final payment to be made on the Revolving Termination Date (or such later expiration date).

(b) The Company shall pay to the Issuer a letter of credit fronting fee with respect to the Letters of Credit equal to the percentage specified in the Fee Letter times the Dollar Equivalent of the average daily maximum amount available to be drawn of the outstanding Letters of Credit, computed on a quarterly basis in arrears based upon Letters of Credit outstanding for that quarter as calculated by the Agent. Such letter of credit fronting fee shall be due and payable on the last day of each calendar quarter.

(c) The Company shall pay to the Issuer from time to time on demand the normal issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuer relating to letters of credit as from time to time in effect.

3.09 Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the Issuer and the applicable Borrower when a Letter of Credit is issued (including any such agreement applicable to a Letter of Credit outstanding on the date hereof), (a) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) ("ISP98") shall apply to each standby Letter of Credit, and (b) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) (the "UCP") shall apply to each commercial Letter of Credit. It is understood, however, that the applicable Borrower may request that any particular Letter of Credit be governed by either ISP98 or the UCP, as selected by such Borrower.

3.10 Utilization of Offshore Currencies. In the case of a proposed Issuance of a Letter of Credit denominated in an Offshore Currency, the applicable Issuer shall be under no obligation to issue such Letter of Credit if the applicable Issuer cannot issue Letters of Credit denominated in the requested Offshore Currency, in which event the Issuer will give notice to the Company no later than 10:30 a.m. (local time) on the third Business Day prior to the date of such issuance that the Issuance in the requested Offshore Currency is not then available. If the applicable Issuer shall have so notified the Company that any such Issuance in a requested Offshore Currency is not then available, then such requested Letter of Credit shall not be issued unless the Company, by notice to the applicable Issuer not later than 5:00 p.m. (local time) three Business Days prior to the requested date of such Issuance, requests that the Letter of Credit be denominated in Dollars and issued in an equivalent aggregate amount, in which case the Letter of Credit shall be so denominated and issued.

ARTICLE IV

TAXES, YIELD PROTECTION AND ILLEGALITY

4.01 Taxes. (a) Any and all payments by each Borrower to each Lender or the Agent under this Agreement and any other Loan Document shall be made free and clear of, and without deduction or withholding for, any Taxes. In addition, each Borrower shall pay all Other Taxes.

(b) If any Borrower shall be required by law to deduct or withhold any Taxes, Other Taxes or Further Taxes from or in respect of any sum payable hereunder to any Lender or the Agent, then:

(i) the sum payable shall be increased as necessary so that, after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section), such Lender or the Agent, as the case may be, receives and retains an amount equal to the sum it would have received and retained had no such deductions or withholdings been made;

(ii) such Borrower shall make such deductions and withholdings;

(iii) such Borrower shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) such Borrower shall also pay to each Lender or the Agent for the account of such Lender, at the time interest is paid, Further Taxes in the amount that the respective Lender specifies as necessary to preserve the after-tax yield the Lender would have received if such Taxes, Other Taxes or Further Taxes had not been imposed.

(c) Each Borrower agrees to indemnify and hold harmless each Lender and the Agent for the full amount of (i) Taxes, (ii) Other Taxes, and (iii) Further Taxes in the amount that the respective Lender specifies as necessary to preserve the after-tax yield the Lender would have received if such Taxes, Other Taxes or Further Taxes had not been imposed, and any liability (including penalties (except to the extent arising from the gross negligence or willful misconduct of the Agent or such Lender), interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Taxes, Other Taxes or Further Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days after the date the Lender or the Agent makes written demand therefor.

(d) Within 30 days after the date of any payment by any Borrower of Taxes, Other Taxes or Further Taxes, such Borrower shall furnish to each Lender or the Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to such Lender or the Agent.

(e) If such Borrower is required to pay any amount to any Lender or the Agent pursuant to subsection (b) or (c) of this Section, then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its Lending Office so as to eliminate any such additional payment by such Borrower which may thereafter

accrue, if such change in the sole judgment of such Lender is not otherwise disadvantageous to such Lender.

4.02 Illegality. (a) If any Lender determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make Offshore Rate Loans, then, on notice thereof by the Lender to the Company through the Agent, any obligation of that Lender to make Offshore Rate Loans shall be suspended until the Lender notifies the Agent and the Company that the circumstances giving rise to such determination no longer exist.

(b) If a Lender determines that it is unlawful to maintain any Offshore Rate Loan, the applicable Borrower shall, upon the receipt by the Company of notice of such fact and demand from such Lender (with a copy to the Agent), prepay in full such Offshore Rate Loans of that Lender then outstanding, together with interest accrued thereon and amounts required under Section 4.04, either on the last day of the Interest Period thereof, if the Lender may lawfully continue to maintain such Offshore Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such Offshore Rate Loan. If a Borrower is required to so prepay any Offshore Rate Loan, then concurrently with such prepayment, the Company (regardless of whether the Company is the initial Borrower) shall borrow from the affected Lender, in the amount of such repayment, a Base Rate Loan.

(c) If the obligation of any Lender to make or maintain Offshore Rate Loans has been so terminated or suspended, the Company may elect, by giving notice to the Lender through the Agent that all Loans which would otherwise be made by the Lender as Offshore Rate Loans shall be instead Base Rate Loans.

(d) Before giving any notice to the Agent under this Section, the affected Lender shall designate a different Lending Office with respect to its Offshore Rate Loans if such designation will avoid the need for giving such notice or making such demand and will not, in the judgment of the Lender, be illegal or otherwise disadvantageous to the Lender.

4.03 Increased Costs and Reduction of Return. (a) If any Lender determines that, due to either (i) the introduction of or any change (other than any change by way of imposition of or increase in reserve requirements included in the calculation of the Offshore Rate) in or in the interpretation of any law or regulation made after the Second Restatement Date or (ii) the compliance by that Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any Offshore Rate Loans or participating in Letters of Credit or Fronted Offshore Currency Loans, or, in the case of the Issuer, any increase in the cost to the Issuer of agreeing to issue, issuing or maintaining any Letter of Credit or of agreeing to make or making, funding or maintaining any unpaid drawing under any Letter of Credit, then such Borrower shall be liable for, and shall from time to time, upon demand (with a copy of such demand to be sent to the Agent), pay to the Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs.

(b) If any Lender shall have determined that (i) the introduction of any Capital Adequacy Regulation made after the Second Restatement Date, (ii) any change in any Capital Adequacy Regulation made after the Second Restatement Date, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof made after the Second Restatement Date, or (iv) compliance by the Lender (or its Lending Office) or any corporation controlling the Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by the Lender or any corporation controlling the Lender and (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment, loans, credits or obligations under this Agreement, then, upon demand of such Lender to the Company through the Agent, the applicable Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts sufficient to compensate the Lender for such increase.

4.04 Funding Losses. Each Borrower shall reimburse each Lender and hold each Lender harmless from any loss or expense which the Lender may sustain or incur as a consequence of:

(a) the failure of such Borrower to make on a timely basis any payment of principal of any Offshore Rate Loan;

(b) the failure of such Borrower to borrow, continue or convert a Loan after such Borrower has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/ Continuation;

(c) the failure of such Borrower to make any prepayment in accordance with any notice delivered under Section 2.10;

(d) the prepayment (including pursuant to Section 2.11) or other payment (including after acceleration thereof or pursuant to Section 2.09(c)) of an Offshore Rate Loan on a day that is not the last day of the relevant Interest Period; or

(e) the automatic conversion under Section 2.04 of any Offshore Rate Loan to a Base Rate Loan on a day that is not the last day of the relevant Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its Offshore Rate Loans or from fees payable to terminate the deposits from which such funds were obtained. For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section and under subsection 4.03(a), each Offshore Rate Loan made by a Lender (and each related reserve, special deposit or similar requirement) shall be conclusively deemed to have been funded at the IBOR used in determining the Offshore Rate for such Offshore Rate Loan by a matching deposit or other borrowing in the interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Offshore Rate Loan is in fact so funded.

4.05 Inability to Determine Rates. If the Agent determines that for any reason adequate and reasonable means do not exist for determining the Offshore Rate for an Applicable Currency for any requested Interest Period with respect to a proposed Offshore Rate Loan, or that the Offshore Rate applicable pursuant to subsection 2.13(a) for an Applicable Currency for any requested Interest Period with respect to a proposed Offshore Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Agent will promptly so notify the Company and each Lender. Thereafter, the obligation of the Lenders to make or maintain Offshore Rate Loans hereunder in such Applicable Currency shall be suspended until the Agent revokes such notice in writing. Upon receipt of such notice, the Company may revoke any Notice of Borrowing or Notice of Conversion/Continuation then submitted by it or any other Borrower. If the Company does not revoke such Notice, then the Lenders shall make, convert or continue the Loans, as proposed by the Company, in the amount specified in the applicable notice submitted by the Company, but such Loans shall be made, converted or continued as Base Rate Loans instead of Offshore Rate Loans, as the case may be, and such Loans shall be assumed by the Company notwithstanding the fact that the Loans may initially have been made to a Subsidiary Borrower.

4.06 Certificates of Lenders. Any Lender claiming reimbursement or compensation under this Article IV shall deliver to the Company (with a copy to the Agent) contemporaneously with the demand in payment a certificate setting forth in reasonable detail the amount payable to the Lender hereunder and such certificate shall be conclusive and binding on the applicable Borrower in the absence of manifest error.

4.07 Substitution of Banks. Upon the receipt by the Company from any Lender (an "Affected Lender") of a claim for compensation under Section 4.04, of notice that it cannot make Offshore Rate Loans under Section 4.02, or of a claim for Taxes or Further Taxes under Section 4.01, then the Agent, at the Company's direction, shall: (i) request the Affected Lender to use good faith efforts to obtain a replacement bank or financial institution satisfactory to the Company to acquire and assume all or a ratable part of all of such Affected Lender's Loans and Commitments at the face amount thereof (a "Replacement Lender"); (ii) request one more of the other Lenders to acquire and assume all or part of such Affected Lender's Loans and Commitments; or (iii) designate a Replacement Lender. Any such designation of a Replacement Lender under clause (i) or (iii) shall be subject to the prior written consent of the Agent (which consent shall not be unreasonably withheld).

4.08 Survival. The agreements and obligations of the Borrowers in this Article IV shall survive the payment of all other Obligations, and no Borrower will have an obligation to pay any amount hereunder unless a demand is made within 180 days after the date upon which the Agent's or applicable Lender's right to reimbursement arises.

ARTICLE V

CONDITIONS PRECEDENT

5.01 Conditions to Effectiveness of Restatement. The effectiveness of this Agreement is subject to the condition that the Agent shall have received all of the following, in form and substance satisfactory to the Agent and each Lender, and in sufficient copies for each Lender:

(a) Credit Agreement and Notes. This Agreement and the Notes and the Swing Line Note executed by each party thereto;

(b) Resolutions; Incumbency.

(i) Copies of the resolutions of the board of directors of the Company and each Subsidiary party to a Loan Document authorizing the transactions contemplated hereby, certified as of the Second Restatement Date by the Secretary or an Assistant Secretary or similar officer of such Person; and

(ii) A certificate of the Secretary or Assistant Secretary or similar officer of the Company and each Subsidiary party to a Loan Document certifying the names and true signatures of the officers of the Company or such Subsidiary authorized to execute, deliver and perform, as applicable, this Agreement, and all other Loan Documents to be delivered by it hereunder;

(c) Organization Documents; Good Standing. Each of the following documents:

(i) the articles or certificate of incorporation and the bylaws of the Company and, as applicable, the articles or certificate of incorporation or formation, bylaws and limited partnership agreement of each Subsidiary party to any Loan Document as in effect on the Second Restatement Date, certified by the Secretary or Assistant Secretary of the Company or such Subsidiary (or of the general partner of such Subsidiary, as applicable) as of the Second Restatement Date (or, as applicable, a certification as of the Second Restatement Date from such person that there has been no change therein since the Restatement Date); and

(ii) a good standing certificate or certificate of status for the Company and each Domestic Subsidiary party to any Loan Document from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation and such other states as shall be reasonably requested by Agent;

(d) Legal Opinions.

(i) an opinion of Foley & Lardner, counsel to the Company and addressed to the Agent and the Lenders;

(ii) an opinion of Van Doorne, Dutch counsel to the Company and addressed to the Agent and the Lenders; and

(iii) an opinion of such local counsel to the Company as shall be requested by the Agent and addressed to the Agent and the Lenders.

(e) Payment of Fees. (a) Evidence of payment by the Company of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Second Restatement Date, together with Attorney Costs of BofA to the extent invoiced prior to or on the Second Restatement Date, plus such additional amounts of Attorney Costs as shall constitute

BofA's 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 the Company and BofA); including any such costs, fees and expenses arising under or referenced in Sections 2.14 and 11.04; (b) Evidence of payment by the Company to the Agent for the benefit of each Lender under the Prior Credit Agreement which signs this Agreement of an amount equal to 0.125% of the sum of its Revolving Loan Commitment and outstanding Term Loan A.

(f) Certificate. A certificate signed by a Responsible Officer, dated as of the Second Restatement Date, stating that:

(i) the representations and warranties contained in Article VI are true and correct on and as of such date, as though made on and as of such date;

(ii) no Default or Event of Default exists or would result from the Credit Extension on such date; and

(iii) there has occurred since September 30, 2000, no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(g) Pro Forma Covenant Compliance Certificate. A compliance certificate signed by a Responsible Officer, dated as of the Second Restatement Date, stating that as of such date and after giving effect to the Geesink Acquisition, the Company is in compliance with Sections 8.16, 8.17, 8.18, 8.19 and 8.20 hereof on a pro forma basis as of the last day of the preceding fiscal quarter).

(h) Collateral Documents. The Collateral Documents (or amendments thereto), executed by the Company and the Subsidiaries, as applicable, in appropriate form for recording, where necessary, together with:

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

(ii) written advice relating to such Lien and judgment searches as the 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 Permitted Liens);

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

(iv) to the extent requested by the 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;

(v) with respect to the Mortgaged Property, (A) an ALTA Form B (or other form acceptable to the Agent and the Lenders) mortgagee policy of title insurance or a binder issued by a title insurance company satisfactory to the 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 the Agent, subject only to exceptions acceptable to the Agent, with such endorsements and affirmative insurance as the Agent may reasonably request or (B) evidence satisfactory to the Agent that such policies issued pursuant to the Original Credit Agreement and the Prior Credit Agreement with respect to such properties as the Agent may require remain in full force and effect as to the Obligations under this Agreement;

(vi) evidence that the 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;

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

(viii) proof of payment (or arrangements therefor satisfactory to the Agent) of any 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 Second Restatement Date or in the future) including sums due in connection with any future advances;

(ix) 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 the Agent shall be granted a Lien for the benefit of the Lenders, as requested by the Agent; and

(x) evidence that all other actions necessary or, in the opinion of the Agent, desirable to perfect and protect the first priority Lien created by the Collateral Documents, and to enhance the Agent's ability to preserve and protect its interests in and access to the Collateral, have been taken (or arrangements therefor satisfactory to the Agent have been made);

(i) Geesink Acquisition.

(i) A true, correct and complete copy of the executed Sale and Purchase Agreement dated as of June 28, 2001 among Powell Duffryn Holdings BV, Powell Duffryn (International) Limited, Powell Duffryn Investments Limited, Oshkosh Group BV, Oshkosh European Holdings SL, Powell Duffryn Limited and the Company

(the "Purchase Agreement") including all schedules and exhibits thereto, together with evidence satisfactory to Agent of the consummation, subject to the funding of the Loans hereunder, of the transactions contemplated by the Purchase Agreement in accordance with the Purchase Agreement and applicable laws;

(ii) Copies of the consolidated balance sheet of the Acquired Companies as at the fiscal years ended March 31, 2000 and March 31, 2001 and the related consolidated statements of income, shareholders' equity and cash flows for such years, setting forth in each case in comparative form the figures for the previous fiscal year;

(iii) [Intentionally Omitted];

(iv) Such other approvals, opinions, agreements, documents or materials as the Agent or any Lender may request in connection with the consummation of the transactions contemplated by the Purchase Agreement which may include materials and documents relating to litigation, tax, accounting, labor, insurance and pension matters and a review of material contracts and contingent liabilities of the Acquired Companies.

(j) Insurance Policies. Standard lenders' payable endorsements with respect to the insurance policies or other instruments or documents evidencing insurance coverage on the properties of the Company in accordance with Section 6.18;

(k) Consent of Required Lenders. The Agent shall have received the consent of the Required Lenders as to this Agreement and the amendments to the Prior Credit Agreement contemplated hereunder;

(l) Windmill Ventures CV and Other Subsidiaries. (i) The Foreign Subsidiary Security Agreement pursuant to which Oshkosh European Holdings SL has 100% of its equity interests pledged to the Agent, (ii) the Foreign Subsidiary Pledge Agreement pursuant to which Windmill Ventures CV pledges the intercompany note of Oshkosh Group BV to the Agent and (iii) the Foreign Subsidiary Guaranty Agreement pursuant to which Windmill Ventures CV guarantees all Obligations under this Agreement and other documentation in form reasonably satisfactory to the Agent, together with an incumbency certificate certified by an officer of each such entity and such other documents and certificates requested by the Agent and, as appropriate joinder and other documentation relating to the other Collateral Documents (including documentation in form reasonably satisfactory to the Agent pursuant to which Windmill Ventures CV has 100% of its equity interests pledged to the Agent);

(m) Payment of Principal and Interest. Evidence of payment in full by the Company of the outstanding principal amount of all "Revolving Loans" under the Prior Credit Agreement and all accrued and unpaid interest and fees thereunder; and

(n) Other Documents. Such other approvals, opinions, documents or materials as the Agent or any Lender may request.

5.02 Conditions to All Credit Extensions. The obligation of each Lender to make any Loan to be made by it (including its initial Loan) and the obligation of the Issuer to Issue any Letter of Credit (including the initial Letter of Credit) is subject to the satisfaction of the following conditions precedent on the relevant Borrowing Date or Issuance Date:

(a) Notice, Application. The Agent shall have received a Notice of Borrowing or in the case of any Issuance of any Letter of Credit, the Issuer and the Agent shall have received an L/C Application or L/C Amendment Application, as required under Section 3.02;

(b) Continuation of Representations and Warranties. The representations and warranties in Article V shall be true and correct in all material respects on and as of such Borrowing Date or Issuance Date with the same effect as if made on and as of such Borrowing Date or Issuance Date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date); and

(c) No Existing Default. No Default or Event of Default shall exist or shall result from such Borrowing or Issuance.

Each Notice of Borrowing and L/C Application or L/C Amendment Application submitted by the Company hereunder shall constitute a representation and warranty by the Company hereunder, as of the date of each such notice and as of each Borrowing Date or Issuance Date, as applicable, that the conditions in this Section 5.02 are satisfied.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Agent and each Lender that both before and after giving effect to the consummation of the transactions contemplated by the Loan Documents (including the Geesink Acquisition):

6.01 Corporate Existence and Power. The Company, each Subsidiary Borrower and each of its Material Subsidiaries:

(a) is a corporation duly organized, validly existing and, to the extent applicable to such entity, in good standing under the laws of the jurisdiction of its incorporation;

(b) has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, to carry on its business in all material respects and to execute, deliver, and perform its obligations under the Loan Documents to which it is a party;

(c) is duly qualified as a foreign corporation in each state in the United States and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license, if applicable to such entity; and

(d) is in compliance with all Requirements of Law; except, in each case referred to in clause (c) or clause (d), to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Corporate Authorization; No Contravention. The execution, delivery and performance by the Company and its Subsidiaries of this Agreement and each other Loan Document to which such Person is party, have been duly authorized by all necessary corporate action, and do not and will not:

(a) contravene the terms of any of that Person's Organization Documents;

(b) conflict with or result in any breach or contravention of, or the creation of any Lien under, any document evidencing any material Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority to which such Person or its property is subject; or

(c) violate any Requirement of Law.

6.03 Governmental Authorization. Excluding governmental approvals required in connection with the exercise by the Lenders of any security interest in shares of a captive insurance company Subsidiary, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except those that have been obtained and remain in effect and for recordings or filings in connection with the Liens granted to the Agent under the Collateral Documents) is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company or any of its Subsidiaries (other than Non-Material Foreign Subsidiaries) of this Agreement or any other Loan Document.

6.04 Binding Effect. This Agreement and each other Loan Document to which the Company or any of its Subsidiaries is a party constitute the legal, valid and binding obligations of the Company and any of its Subsidiaries to the extent it is a party thereto, enforceable against such Person in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

6.05 Litigation. There are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of the Company, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against the Company, or its Subsidiaries or any of their respective properties:

(a) which purport to affect or pertain to this Agreement, any other Loan Document or the Purchase Agreement, or any of the transactions contemplated hereby or thereby; or

(b) as to which there exists a substantial likelihood of an adverse determination, which determination could reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been

issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, any other Loan Document or the Purchase Agreement, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

6.06 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by the Company or from the grant or perfection of the Liens of the Agent and the Lenders on the Collateral. As of the Second Restatement Date, neither the Company nor any Subsidiary is in default under or with respect to any Contractual Obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the Second Restatement Date, create an Event of Default under subsection 9.01(e).

6.07 ERISA Compliance. Except as specifically disclosed in Schedule 6.07:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and to the best knowledge of the Company, nothing has occurred which would cause the loss of such qualification. The Company and each ERISA Affiliate has made all required contributions to any 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 Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in 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 the Company 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 the Company 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

Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

6.08 Use of Proceeds; Margin Regulations. The proceeds of the Loans are to be used solely for the purposes set forth in and permitted by Section 7.12 and Section 8.07. Neither the Company nor any Subsidiary is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

6.09 Title to Properties. The Company and each Material Subsidiary have good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as disclosed on Schedule 8.01, as of the Second Restatement Date, the property of the Company and its Subsidiaries is subject to no Liens, other than Permitted Liens.

6.10 Taxes. Except as disclosed on Schedule 6.10, the Company and its Subsidiaries (other than Non-Material Foreign Subsidiaries) have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any Subsidiary that would, if made, have a Material Adverse Effect.

6.11 Financial Condition. (a) Each of (i) the audited consolidated financial statements of the Company and its Subsidiaries dated September 30, 2000, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal year ended on that date, and

(ii) the unaudited consolidated financial statements of the Company and its Subsidiaries dated March 31, 2001 and the related consolidated statements of income or operations, shareholders' equity and cash flows for the six months ended on that date:

(x) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except for the absence of footnotes and as otherwise expressly noted therein, subject, in the case of such unaudited financial statements, to ordinary, good faith year end audit adjustments;

(y) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(z) except as specifically disclosed in Schedule 6.11, show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof.

(b) Since September 30, 2000, there has been no Material Adverse Effect.

6.12 Environmental Matters. (a) Except as specifically disclosed in Schedule 6.12, the on-going operations of the Company and each of its Subsidiaries comply in all respects with all Environmental Laws, except such non-compliance which would not (if enforced in accordance with applicable law) result in liability in excess of \$15,000,000 in the aggregate (exclusive of amounts payable under insurance policies and indemnity agreements which the Company or such Subsidiary reasonably expects to receive).

(b) Except as specifically disclosed in Schedule 6.12, the Company and each of its Material Subsidiaries have obtained all material licenses, permits, authorizations and

registrations required under any Environmental Law ("Environmental Permits") and necessary for their respective ordinary course operations, all such Environmental Permits are in good standing, and the Company and each of its Subsidiaries are in compliance with all material terms and conditions of such Environmental Permits.

(c) Except as specifically disclosed in Schedule 6.12, none of the Company, any of its Subsidiaries or any of their respective present property or operations, is subject to any outstanding written order from or agreement with any Governmental Authority, nor subject to (i) any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Material or (ii) to the extent that it could reasonably be expected to have a Material Adverse Effect, any claim, proceeding or written notice from any Person regarding any Environmental Law, Environmental Claim or Hazardous Material.

(d) Except as specifically disclosed in Schedule 6.12, there are no Hazardous Materials or other conditions or circumstances existing with respect to any property of the Company or any Subsidiary, or arising from operations prior to the Second Restatement Date, of the Company or any of its Subsidiaries that would reasonably be expected to give rise to Environmental Claims with a potential liability of the Company and its Subsidiaries in excess of \$15,000,000 in the aggregate for all such conditions, circumstances and properties (exclusive of amounts payable under insurance policies and indemnity agreements which the Company or such Subsidiary reasonably expects to receive). In addition, (i) neither the Company nor any Subsidiary has any underground storage tanks (x) that are not properly registered or permitted under applicable Environmental Laws, or (y) that are leaking or disposing of Hazardous Materials off-site, which in any such case could reasonably be expected to have a Material Adverse Effect, and (ii) the Company and its Material Subsidiaries have met all material notification requirements under applicable Environmental Laws.

6.13 Collateral Documents. (a) The provisions of each of the Collateral Documents are effective to create in favor of the Agent for the benefit of the Lenders, a legal, valid and enforceable first priority security interest in all right, title and interest of the Company and its Subsidiaries in the collateral described therein, subject only to any Permitted Liens.

(b) Each Mortgage when delivered will be effective to grant to the Agent for the benefit of the 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 Permitted Liens and except as noted in the title policies delivered to the Agent pursuant to

Section 5.01, 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 Company or such Subsidiary 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, as noted in the title policies delivered to the Agent pursuant to Section 5.01 and Permitted Liens.

(c) All representations and warranties of the Company and any of its Subsidiaries party thereto contained in the Collateral Documents are true and correct.

6.14 Regulated Entities. None of the Company, any Person controlling the Company, or any Subsidiary, is an "Investment Company" within the meaning of the Investment Company Act of 1940. Neither the Company nor any other Borrower is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other U.S. Federal or state statute or regulation limiting its ability to incur Indebtedness.

6.15 No Burdensome Restrictions. Neither the Company nor any Subsidiary is a party to or bound by any Contractual Obligation, or subject to any restriction in any Organization Document, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

6.16 Copyrights, Patents, Trademarks and Licenses, etc. The Company and its Material Subsidiaries own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Company, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person, which infringement could reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed in Schedule 6.16, no claim or litigation regarding any of the foregoing is pending or threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the knowledge of the Company, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

6.17 Capitalization; Subsidiaries. As of the Second Restatement Date, the Company has no Subsidiaries other than those specifically disclosed in part (a) of Schedule 6.17 hereto and has no equity investments in any other corporation or entity other than those specifically disclosed in part (b) of Schedule 6.17. The capitalization of the Company and its Subsidiaries as of the Second Restatement Date is as set forth on part (a) of Schedule 6.17.

6.18 Insurance. Except as specifically disclosed in Schedule 6.18, the properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and are similarly situated.

6.19 Swap Obligations. Neither the Company nor any of its Subsidiaries has incurred any outstanding obligations under any Swap Contracts, other than Permitted Swap Obligations. The Company 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.

6.20 Solvency. The Company and each of its Material Subsidiaries are Solvent.

6.21 Subordination Provisions. The subordination provisions contained in the Senior Subordinated Debt Documents are enforceable against the Company and the holders thereof, and the Loans are within the definition of "Senior Debt" included in such provisions.

6.22 Subsidiary Borrower Supplements. For so long as any Subsidiary shall be a Subsidiary Borrower, the representations and warranties of such Subsidiary in such Subsidiary's Subsidiary Borrower Supplement are true and correct.

6.23 Acquisition Matters. The Company has delivered to the Agent true, complete and correct copies of the Acquisition Documents (including all schedules, exhibits, annexes, amendments, supplements, modifications and all other documents delivered pursuant thereto or in connection therewith). The Acquisition Documents as originally executed and delivered by the parties thereto have not been amended, waived, supplemented or modified without the consent of the Agent. The representations and warranties of Oshkosh Group BV, Oshkosh European Holdings SL and the Company set forth therein and, to the knowledge of the Company on the date of this Agreement, the representations and warranties of the other parties set forth therein are true and correct in all material respects as of the date thereof. On the date of this Agreement, none of Oshkosh Group BV, Oshkosh European Holdings SL, the Company nor any other party to any of the Acquisition Documents is in default in the performance of or compliance with any provisions under the Acquisition Documents. Subject to the funding of the Loans, hereunder, the Geesink Acquisition has been consummated in accordance with applicable laws and regulations. As of the date of this Agreement, there has been no material adverse change in the business, assets, liabilities (actual or contingent) operations, condition (financial or otherwise) or prospects of the Acquired Companies taken as a whole, as measured against the financial statements of the Acquired Companies as of March 31, 2001. The consummation of the Geesink Acquisition (including the related Investments, incurrence of Indebtedness and other aspects of such acquisition) do not breach, conflict with or contravene the Senior Subordinated Indenture or the notes issued thereunder or any other material Contractual Obligation of the Company or its Subsidiaries (other than Non-Material Foreign Subsidiaries).

6.24 Full Disclosure. None of the representations or warranties made by the Company or any Subsidiary in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of the Company or any Subsidiary (other than Non-Material Foreign Subsidiaries) in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of the Company to the Lenders prior to the Second Restatement Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

ARTICLE VII

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Required Lenders waive compliance in writing:

7.01 Financial Statements. The Company shall deliver to the Agent, in form and detail satisfactory to the Agent and the Required Lenders, with sufficient copies for each Lender:

(a) as soon as available, but not later than the earlier of (i) five days after the filing thereof with the SEC and (ii) 105 days after the end of each fiscal year (commencing with the fiscal year ended September 30, 2000), a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as at the end of such year and the related consolidated statements of income, shareholders' equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the opinion of Arthur Andersen LLP or another nationally-recognized independent public accounting firm ("Independent Auditor") which report shall state that such consolidated financial statements present fairly the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years. Such opinion shall not be qualified or limited because of a restricted or limited examination by the Independent Auditor of any material portion of the Company's or any Subsidiary's records; 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 (commencing with the fiscal quarter ended December 31, 2000), a copy of the unaudited consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal quarter and the related consolidated statements of income, shareholders' equity and cash flows for the period commencing on the first day and ending on the last day of such fiscal quarter, together with a consolidating income statement for such period, and certified by a Responsible Officer as fairly presenting, in accordance with GAAP (subject to ordinary, good faith year-end audit adjustments and the absence of footnotes), the financial position and the results of operations of the Company and the Subsidiaries.

7.02 Certificates; Other Information. The Company shall furnish to the Agent, with sufficient copies for each Lender:

(a) concurrently with the delivery of the financial statements referred to in subsection 7.01(a), a certificate of the Independent Auditor stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate;

(b) concurrently with the delivery of the financial statements referred to in subsections 7.01(a) and (b), a Compliance Certificate executed by a Responsible Officer;

(c) concurrently with the delivery of the financial statements referred to in subsection 7.01(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, copies of all financial statements and reports that the Company sends to its shareholders, and copies of all financial statements and regular, periodic or special reports (including Forms 10K, 10Q and 8K) that the Company or any Subsidiary may make to, or file with, the SEC (it being understood that notification to the Agent of actual availability of any of the foregoing on the internet shall constitute the furnishing of same to the Agent); and

(e) promptly, such additional information regarding the business, financial or corporate affairs of the Company or any Subsidiary as the Agent, at the request of any Lender, may from time to time reasonably request.

7.03 Notices. The Company shall promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default or Event of Default;

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

(c) of the occurrence of any of the following events affecting the Company or any ERISA Affiliate (but in no event more than 10 days after such event becomes known to an officer of the Company or any Subsidiary), and deliver to the 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 the Company 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 the Company 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.

(d) of any material change in accounting policies or financial reporting practices by the Company or any of its consolidated Subsidiaries; and

(e) upon, but in no event later than 15 days after, any officer of the Company 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 the Company 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 the Company or any Subsidiary that could reasonably be anticipated to cause such property of the Company 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.

Each notice under this Section shall be accompanied by a written statement by a Responsible Officer setting forth details of the occurrence referred to therein, and stating what action the Company or any affected Subsidiary proposes to take with respect thereto and at what time. Each notice under subsection 7.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

7.04 Preservation of Corporate Existence, Etc. Except as otherwise expressly permitted hereby, the Company shall, and shall cause each Subsidiary (other than Subsidiaries with no material assets) to:

(a) preserve and maintain in full force and effect its corporate existence and good standing (if applicable) under the laws of its state or jurisdiction of incorporation, except to the extent otherwise expressly permitted herein;

(b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business except in connection with transactions permitted by Section 8.03 and sales of assets permitted by Section 8.02;

(c) use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill except to the extent otherwise expressly permitted herein; and

(d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Except with respect to those Subsidiaries set forth on Schedule 7.04, the Company shall cause each Subsidiary which is a Wholly-Owned Subsidiary as of the Second Restatement Date to continue to exist as a Wholly-Owned Subsidiary so long as it shall be a Subsidiary.

7.05 Maintenance of Property. The Company shall maintain, and shall cause each Subsidiary to maintain, and preserve all its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.06 Insurance. In addition to insurance requirements set forth in the Collateral Documents, the Company shall maintain, and shall cause each Subsidiary to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; including workers' compensation insurance, public liability and property and casualty insurance which amount shall not be materially reduced by the Company in the absence of 30 days' prior written notice to the Agent; provided that self insurance of risks and in amounts customary in the Company's industry shall be permitted. All casualty insurance maintained by the Company shall name the Agent as loss payee and all liability insurance shall name the Agent as additional insured for the benefit of the Lenders, as their interests may appear. Upon request of the Agent or any Lender, the Company shall furnish the Agent, with sufficient copies for each Lender, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer of the Company (and, if requested by the Agent, any insurance broker of the Company) setting forth the nature and extent of all insurance maintained by the Company and its Subsidiaries in accordance with this Section or any Collateral Documents (and which, in the case of a certificate of a broker, were placed through such broker).

7.07 Payment of Obligations. The Company shall, and shall cause each Subsidiary to, pay and discharge as the same shall become due and payable, all their respective obligations and liabilities, including:

- (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings and adequate reserves in accordance with GAAP are being maintained by the Company or such Subsidiary; and
- (b) all material lawful claims which, if unpaid, would by law become a Lien upon its property in violation of Section 8.01.

7.08 Compliance with Laws. The Company shall comply, and shall cause each Subsidiary to comply, in all material respects with all material Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except such as may be contested in good faith or as to which a bona fide dispute may exist.

7.09 Compliance with ERISA. The Company shall, and shall 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; to the extent that any failure to comply with any such provision could reasonably be expected to result in liabilities in excess of \$3,000,000 for all such failures in the aggregate.

7.10 Inspection of Property and Books and Records. The Company shall maintain and shall cause each Subsidiary to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company and such Subsidiary. The Company shall permit, and shall cause each Subsidiary to permit, representatives and independent contractors of the Agent or any Lender to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided, however, when an Event of Default exists the Agent or any Lender may do any of the foregoing at the expense of the Company at any time during normal business hours and without advance notice; provided, further, that neither the Agent nor any Lender shall conduct any environmental testing of any owned or leased facility of the Company or any Subsidiary without the prior written consent of the Company, which shall not unreasonably be withheld.

7.11 Environmental Laws. (a) The Company shall, and shall cause each Subsidiary to, conduct its operations and keep and maintain its property in compliance with all Environmental Laws, the violation of which could reasonably be expected to result in liability to the Company and its Subsidiaries in excess of \$15,000,000 in the aggregate (net of any payments under insurance policies or indemnity agreements which the Company or such Subsidiary reasonably expects to receive).

(b) Upon the written request of the Agent or any Lender, the Company shall submit and cause each of its Subsidiaries to submit, to the Agent with sufficient copies for each Lender, at the Company's sole cost and expense, at reasonable intervals, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report required pursuant to subsection 7.03(e), that could, individually or in the aggregate, result in liability in excess of \$15,000,000 (net of any payments under insurance policies or indemnity agreements which the Company or such Subsidiary reasonably expects to receive).

7.12 Use of Proceeds. The Company shall use the proceeds of the Loans

(a) to directly or indirectly finance the Geesink Acquisition, (b) to pay fees and expenses related to the Geesink Acquisition, (c) to make investments in the Acquired Companies, (d) to finance Acquisitions made in accordance with Section 8.04 and (e) for working capital, capital expenditures and other general corporate purposes not in contravention of any Requirement of Law or of any Loan

Document; provided, however, the proceeds of Term Loan B shall be used solely for the purposes described in subsections (a), (b) and (c) above.

7.13 Further Assurances. (a) The Company shall ensure that all written information, exhibits and reports furnished to the Agent or the 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 the Agent and the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgment or recordation thereof.

(b) Promptly upon request by the Agent or the Required Lenders, the Company 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 the 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 the Agent and Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document or under any other document executed in connection therewith.

7.14 Additional Guaranties and Personal Property Pledge. Effective upon any Person (a) becoming a Domestic Subsidiary (other than (w) any Domestic Subsidiary with less than 2.0% of the total assets of the Company and its Subsidiaries (other than Leasing Subsidiaries), (x) any Leasing Subsidiary, (y) any Securitization Subsidiary and (z) any captive insurance company Subsidiary) or (b) becoming or being required to become a "Subsidiary Guarantor" under the Senior Subordinated Indenture or a guarantor of any other subordinated Indebtedness of the Company or any Domestic Subsidiary, such Person shall (except in the case of Oshkosh European Holdings SL, Oshkosh Group BV and Geesink Group BV) (i) join as a Guarantor under the Subsidiary Guaranty and the Subsidiary Security Agreement pursuant to amendments thereto in form and substance acceptable to the Agent, (ii) provide an intercompany note to the Company which shall be pledged to the Agent pursuant to the Pledge Agreement and (iii) provide such other of the items specified in subsection 5.01(h) as shall be applicable thereto, in each case in form and substance acceptable to Agent; provided, that any Domestic Subsidiary which does not become a party to the Subsidiary Guaranty and the Subsidiary Security Agreement because it does not satisfy the requirement in clause (w) above shall execute the Subsidiary Guaranty and the Subsidiary Security Agreement if it subsequently acquires sufficient assets to satisfy such requirement; provided, further, that if all Domestic Subsidiaries (other than Leasing Subsidiaries) which are not party to the Subsidiary Guaranty and the Subsidiary Security Agreement hold 4.0% or more of the total assets of the Company and its Subsidiaries (other than Leasing Subsidiaries), then such Domestic Subsidiaries shall promptly execute the Subsidiary

Guaranty and the Subsidiary Security Agreement so that, upon such execution, such 4.0% threshold is no longer exceeded. The Company shall promptly notify the Agent at any time at which, in accordance with this Section 7.14, any Subsidiary shall be required to join as a guarantor under the Subsidiary Guaranty and the Subsidiary Security Agreement, with such determinations to be made based on the average assets of the relevant Subsidiary and other entities over the prior 12-month period.

7.15 Additional Real Property. Concurrent with (a) the acquisition by the Company or any Domestic Subsidiary of any parcel of property which has a value in excess of \$5,000,000 or (b) the acquisition or lease by the Company or any Domestic Subsidiary of any parcel of property which, in the Agent's determination, is otherwise of significant value to the operations of the Company and its Subsidiaries, unless the Required Lenders shall otherwise direct, the Company shall, or shall cause such Domestic Subsidiary to, execute and deliver to the Agent a Mortgage on such parcel or leasehold substantially in the form of the applicable Mortgages executed and delivered on the Closing Date, together with such other of the items specified in subsection 5.01(g) as shall be applicable thereto, in each case in form and substance acceptable to the Agent.

7.16 Additional Pledge. Effective upon any Person becoming a Subsidiary of the Company or any of its Subsidiaries (including without limitation any Leasing Subsidiary), the Company shall, and shall cause each Domestic Subsidiary to, pledge the stock or other equity interests thereof held by it to the Agent pursuant to documentation reasonably acceptable to the Agent; provided, that the equity interests of Securitization Subsidiaries and Oshkosh/McNeilus Financial Services Partnership need not be pledged at any time; provided, further, that only 65% of the equity interests of any Foreign Subsidiary shall be required to be pledged (except that the Company shall cause to be so pledged to the Agent 100% of the equity interests of (i) Windmill Ventures CV and Oshkosh European Holdings SL and (ii) any other Foreign Subsidiary (whether or not a first-tier Foreign Subsidiary) for so long as any such Foreign Subsidiary is a "Subsidiary Guarantor" under the Senior Subordinated Indenture and so long as such pledge is permitted by applicable law, in light of the current Loan structure hereunder (and upon any such Foreign Subsidiary ceasing to be such a Subsidiary Guarantor, then so long as no Default or Event of Default has occurred and is continuing the Agent shall release the pledge of any equity interest in such Foreign Subsidiary which would not have been required but for this proviso)).

ARTICLE VIII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, unless the Required Lenders waive compliance in writing:

8.01 Limitation on Liens. The Company shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, make, create, incur, assume or suffer to exist any Lien upon

or with respect to any part of its property, whether now owned or hereafter acquired, other than the following ("Permitted Liens"):

(a) any Lien existing on property of the Company or any Subsidiary on the Second Restatement Date and set forth in Schedule 8.01 securing Indebtedness outstanding on such date;

(b) any Lien created under any Loan Document;

(c) Liens for taxes, fees, assessments or other governmental charges (other than any Lien imposed by ERISA or in respect of environmental obligations) which are not delinquent or remain payable without penalty, or to the extent that non-payment thereof is permitted by Section 7.07, provided that no notice of lien has been filed or recorded under the Code;

(d) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;

(f) Liens on the property of the Company or its Subsidiaries securing (i) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, (ii) Contingent Obligations in connection with performance bonds, Surety Bonds and appeal bonds, and (iii) other non-delinquent obligations of a like nature, in each case, incurred in the ordinary course of business; provided that all such Liens in the aggregate could not (taking into account the probable likelihood of their being enforced) reasonably be expected to cause a Material Adverse Effect;

(g) Liens consisting of judgment or judicial attachment liens, provided that the enforcement of such Liens is effectively stayed and the obligations secured by all such Liens in the aggregate at any time outstanding for the Company and its Subsidiaries do not exceed \$5,000,000;

(h) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business 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 interfere with the ordinary conduct of the businesses of the Company and its Subsidiaries;

(i) Liens on assets of corporations which become Subsidiaries after the Second Restatement Date; 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) \$25,000,000, less (ii) amounts outstanding under paragraphs (j) and (p);

(j) purchase money security interests on any property acquired or held by the Company 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 subsection 8.05(d), (i) \$25,000,000, less (ii) amounts outstanding under paragraphs (i) and (p);

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

(l) 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 the Company or any Subsidiary in excess of those set forth by regulations promulgated by the FRB, and (ii) such deposit account is not intended by the Company or any Subsidiary to provide collateral to the depository institution;

(m) Liens on vehicles or related property securing obligations under any Floor Plan Financing Facility incurred in the ordinary course of business; provided, that the aggregate principal amount of all obligations at any time outstanding under all Floor Plan Financing Facilities after giving effect to such incurrence does not exceed the total cost of the vehicles and equipment securing such obligations;

(n) Liens on assets acquired with the proceeds of industrial revenue bonds securing Indebtedness incurred or assumed to acquire such property; provided, that the obligations secured by such Liens do not exceed \$20,000,000 in the aggregate at any time outstanding for the Company and its Subsidiaries;

(o) Liens upon assets of any Securitization Subsidiary relating to any Permitted Securitization;

(p) Liens securing other obligations of the Company and its Subsidiaries not to exceed in the aggregate at any one time outstanding (i) \$25,000,000 less (ii) amounts outstanding under paragraphs (i) and (j); and

(q) Escrow rights of the Ministry of Defense of the United Kingdom relative to drawings and other related intellectual property related to the Company's contracts with such Ministry.

8.02 Disposition of Assets. The Company shall not, and shall not suffer or permit any Subsidiary to, directly or indirectly, (x) issue any equity interests of any Subsidiary to any Person which is not the Company or a Subsidiary or (y) sell, assign, lease, convey, transfer or otherwise

dispose of (whether in one or a series of transactions) any property, including accounts and notes receivable, with or without recourse (each, an "Asset Disposition"), or enter into any agreement to do any of the foregoing, except:

- (a) dispositions of inventory, or used, worn-out or surplus equipment, all in the ordinary course of business;
- (b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment;
- (c) Asset Dispositions by the Company or any Subsidiary that are not otherwise permitted under this Section 8.02 to the extent that proceeds from such dispositions are either (i) reinvested by the Company or such Subsidiary in similar property within 180 days of such disposition (or within 210 days of such disposition in the event that the Company or such Subsidiary has entered into a legal, valid and binding contract to reinvest such proceeds within such 180 day period) or (ii) applied towards the purchase price of an Acquisition otherwise permitted pursuant to the provisions of this Agreement within 180 days of such disposition;
- (d) Asset Dispositions by the Company or any Subsidiary to any Wholly-Owned Subsidiary that is party to the Subsidiary Guaranty and Asset Dispositions permitted by Section 8.03(c);
- (e) sales of accounts receivable and related rights (and of rights as lessor under capitalized leases and related equipment and rights) to or by a Securitization Subsidiary pursuant to a Permitted Securitization;
- (f) sale/leaseback transactions involving an aggregate consideration not to exceed \$10,000,000 after the date hereof;
- (g) the transfer of Lease Assets to Leasing Subsidiaries solely in connection with Leasing Transactions;
- (h) the sale or other disposition of the assets or stock of Summit Performance Systems, Inc. in exchange for cash or a promissory note; provided, that any such promissory note is pledged to the Agent pursuant to the Pledge Agreement;
- (i) Asset Dispositions that are not otherwise permitted in this Section 8.02 and which are of property located outside of the United States; provided; that the aggregate fair market value of all such property disposed of after the date hereof (valued at the time of disposition) shall not exceed \$12,500,000;
- (j) Asset Dispositions of property (1) acquired pursuant to Section 8.04(a) or (2) acquired as an Investment pursuant to Section 8.04(b)-(q); provided, that the aggregate fair market value of such property referred to in clause (2) shall not exceed \$10,000,000 after the date hereof;
- (k) the granting of non-exclusive licenses of patents, trademarks and copyrights by the Company or any Subsidiary;

(l) Asset Dispositions identified on Schedule 8.02;

(m) sales at a discount in the ordinary course of business of accounts receivable arising out of sales by the Company or its Domestic Subsidiaries to Persons domiciled outside of the United States; and

(n) 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) at least 75% of the aggregate sales price from such dispositions shall be paid in cash, and (iii) the aggregate value of all assets so sold by the Company and its Subsidiaries after the date hereof, together, shall not (x) represent more than 10% of Net Worth, as would be shown in the consolidated financial statements of the Company and its Subsidiaries as at the end of the fiscal quarter next preceding the date on which such determination is made, or (y) be responsible for more than 10% of the consolidated net revenues or consolidated net income of the Company and its Subsidiaries for the 12-month period ending as of the end of the fiscal quarter next preceding the date of determination.

8.03 Consolidations and Mergers. The Company shall not, and shall not suffer or permit any Subsidiary to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except:

(a) any Wholly-Owned Subsidiary may merge with another Wholly-Owned Subsidiary, provided, that pursuant to this subsection (a), a Foreign Subsidiary may only merge with another Foreign Subsidiary and a Domestic Subsidiary may only merge with another Domestic Subsidiary;

(b) any Subsidiary may merge with the Company, provided that (i) the Company shall be the continuing or surviving corporation, or with any one or more Subsidiaries, and (ii) if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving corporation;

(c) another Person organized under the laws of any state of the United States may merge with or consolidate into the Company or any Subsidiary so long as (i) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction (determined in respect of Sections 8.16, 8.17, 8.18, 8.19 and 8.20 on a pro forma basis as of the last day of the prior fiscal quarter), (ii) the Company or such Subsidiary is the surviving Person, and (iii) all applicable legal requirements have been satisfied;

(d) any Subsidiary may transfer, dispose of or sell all or substantially all of its assets (upon voluntary liquidation or otherwise), to the Company or another Wholly-Owned Subsidiary;

(e) the Company may merge with a corporation organized under the laws of any state of the United States solely for the purpose of reincorporating in such other state so long as (i) the surviving Person assumes the Company's Obligations under the Loan Documents

pursuant to a written instrument reasonably satisfactory to the Agent and (ii) no Default or Event of Default has occurred and is continuing or would occur after giving effect thereto; and

(f) the Company or any Subsidiary may sell or transfer assets to effect an Investment in a Joint Venture permitted by Section 8.04(e).

8.04 Loans and Investments. The Company shall not purchase or acquire, or suffer or permit any Subsidiary to purchase or acquire, or make any commitment therefor, any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or make or commit to make any Acquisitions, or make or commit to make any advance, loan, extension of credit or capital contribution to or any other investment in, any Person including any Affiliate of the Company (together, "Investments"), except for:

(a) Investments held by the Company or Subsidiary in the form of cash equivalents or short term marketable securities;

(b) extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business;

(c) Investments by the Company or any Subsidiary in Wholly-Owned Subsidiaries party to the Subsidiary Guaranty and other Indebtedness incurred pursuant to subsection 8.05(e);

(d) Investments incurred in order to consummate Acquisitions otherwise permitted herein, provided that (i) without the prior written consent of the Required Lenders, the aggregate consideration (consisting of cash paid plus assumption of Indebtedness) for Acquisitions undertaken by the Company and its Subsidiaries (other than the pending Acquisitions described on Schedule 8.04(d)) shall not exceed \$35,000,000 for any single Acquisition or series of related Acquisitions or \$100,000,000 in the aggregate for all such Acquisitions consummated after the Second Restatement Date, (ii) such Acquisitions are undertaken in accordance with all applicable Requirements of Law, (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) the Company provides the Agent and the Lenders with a certificate at least ten days prior to the consummation of such Acquisition evidencing that, after giving effect to such Acquisition, no Default or Event of Default would occur (as determined in respect of Sections 8.16, 8.17, 8.18, 8.19 and 8.20 on a pro forma basis as of the last day of the preceding fiscal quarter); provided, however, that such requirement may be waived by the Agent in its sole and absolute discretion in respect of any Acquisition with a total consideration of \$10,000,000 or less; and (v) the Person or business which is the subject of such Acquisition is in the same or similar line of business as the Company and its Subsidiaries or another business relating thereto.

(e) Investments in Joint Ventures (other than Leasing Subsidiaries) not exceeding \$35,000,000 in the aggregate after the Second Restatement Date;

(f) Investments constituting Permitted Swap Obligations or payments or advances under Swap Contracts relating to Permitted Swap Obligations;

- (g) loans, advances and progress payments to vendors of the Company 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 the Company and its Subsidiaries in the ordinary course of business and consistent with past practices;
- (h) loans and advances to officers, directors and employees of the Company and its Subsidiaries not to exceed \$2,500,000 in the aggregate at any one time outstanding;
- (i) 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;
- (j) loans and advances to sales representatives of the Company or its Subsidiaries in the ordinary course of business and consistent with past practices;
- (k) Investments (i) by the Company 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 aggregate cash consideration paid therefor after the Second Restatement Date shall not exceed \$35,000,000; 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;
- (l) Cash Investments in Leasing Subsidiaries consisting exclusively of Lease Assets solely in connection with the consummation of Leasing Transactions and additional Investments in Leasing Subsidiaries consisting of cash and other property in an amount not to exceed either (i) the sum of (A) \$25,000,000 plus (B) the aggregate cash dividends or distributions paid by the Leasing Subsidiaries after the Second Restatement Date, or (ii) \$10,000,000 in any fiscal year;
- (m) Investments aggregating not in excess of \$10,000,000 made after the date hereof in a Subsidiary which is a captive insurance company; (n) Investments aggregating not in excess of \$125,000 made after the date hereof in Securitization Subsidiaries;
- (o) Investments of a nature not contemplated by the foregoing clauses hereof that are outstanding as of the Second Restatement Date and set forth in Schedule 8.04 (o) hereto;
- (p) Investments in Subsidiaries of up to the Dollar equivalent of 150,000,000 Euros in order to consummate the Geesink Acquisition, as set forth on Schedule 8.04(p); and
- (q) Other Investments aggregating no more than \$10,000,000 after the date hereof.

8.05 Limitation on Indebtedness. The Company shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

- (a) Indebtedness incurred pursuant to this Agreement;
- (b) Indebtedness consisting of Contingent Obligations permitted pursuant to Section 8.08;
- (c) Indebtedness existing on the Second Restatement Date and set forth in Schedule 8.05;
- (d) Indebtedness incurred in connection with leases permitted pursuant to Section 8.10;
- (e) (i) unsecured Indebtedness owed (A) to the Company or any Wholly-Owned Subsidiary which is a Guarantor (B) by any Subsidiary or by the Company or any Wholly-Owned Subsidiary which is a Guarantor to any Wholly-Owned Subsidiary which is a Guarantor so long as it is evidenced by a note pledged to the Agent, (ii) unsecured Indebtedness owed by the Company or any non-Guarantor Subsidiary to any non-Guarantor Subsidiary or the Company and (iii) unsecured Indebtedness owed by the Company to any Leasing Subsidiary to the extent of funds advanced to the Company in connection with the Company's cash pooling arrangements.
- (f) Indebtedness evidenced by the Senior Subordinated Notes;
- (g) unsecured Indebtedness incurred on a subordinated basis on terms (other than interest and fees, which shall be at a market rate) not materially less favorable (or in the case of terms of subordination, no less favorable) to the Lenders than those of the Senior Subordinated Notes or on such other terms and conditions approved by the Agent and the Required Lenders;
- (h) unsecured Indebtedness owed to former McNeilus shareholders in an aggregate principal amount not to exceed \$3,300,000 at any one time outstanding;
- (i) Indebtedness which represents deferred purchase price obligations of the Company or a Subsidiary incurred in connection with (i) Acquisitions permitted by Section 8.04(d) or (ii) the Purchase Agreement;
- (j) Indebtedness of Securitization Subsidiaries which is non-recourse to the Company or any other Subsidiary and which is incurred in connection with a Permitted Securitization;
- (k) Indebtedness incurred in connection with the issuance of industrial revenue bonds in a principal amount not to exceed \$20,000,000 at any one time outstanding; and
- (l) other Indebtedness with an aggregate principal amount not to exceed \$45,000,000 at any time outstanding.

8.06 Transactions with Affiliates. The Company shall not, and shall not suffer or permit any Subsidiary to, enter into any transaction with any Affiliate of the Company, except upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would obtain in a comparable arm's-length transaction with a Person not an Affiliate of the Company or such Subsidiary and except for the following:

- (a) any employment or severance agreement and any amendment thereto entered into by the Company or any of its Subsidiaries in the ordinary course of business;
- (b) transactions between (i) the Company and any Guarantor, (ii) Guarantors, (iii) the Company or any Subsidiary and any Leasing Subsidiary (including the contribution of overhead costs consistent with past practice) in the ordinary course of business or (iv) non-Guarantor Subsidiaries;
- (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 the Company;
- (d) payments permitted pursuant to Section 8.11 and transactions permitted pursuant to Section 8.04 or Section 8.08;
- (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 (including the payment of commissions on behalf of any Leasing Subsidiary by the Company or any of its Subsidiaries consistent with past practices and in the ordinary course of business).

8.07 Use of Proceeds. The Company shall not, and shall not suffer or permit any Subsidiary to, use any portion of the proceeds of any Loan or any Letter of Credit, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of the Company or others incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock, or (iv) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

8.08 Contingent Obligations. The Company shall not, and shall not suffer or permit any Subsidiary to, create, incur, assume or suffer to exist any Contingent Obligations except:

- (a) endorsements for collection or deposit in the ordinary course of business;
- (b) Permitted Swap Obligations;
- (c) Contingent Obligations of the Company and its Subsidiaries existing as of the Second Restatement Date and listed in Schedule 8.08;
- (d) Contingent Obligations with respect to Indebtedness of the Company's Wholly-Owned Subsidiaries permitted pursuant to Section 8.05;

- (e) Contingent Obligations with respect to Surety Instruments incurred by the Company and its Subsidiaries (including on behalf of third parties) in the ordinary course of business;
- (f) Contingent Obligations of the Company and its Wholly-Owned Subsidiaries in respect of leasing programs with financial institutions mutually acceptable to the Company and the Agent in an amount not to exceed \$2,000,000 incurred per year (up to a maximum of \$7,000,000 at any one time outstanding), without duplication of amounts covered by subsection (j) below;
- (g) Contingent Obligations with respect to letters of credit issued to support Indebtedness incurred in connection with industrial revenue bonds permitted pursuant to Section 8.05(h) with an aggregate face amount not exceeding at any time \$20,000,000;
- (h) Contingent Obligations of any Subsidiary which is a captive insurance company Subsidiary which are incurred in the ordinary course of its business and are non-recourse to the Company and its other Subsidiaries;
- (i) Contingent Obligations of the Company's Subsidiaries arising from their becoming a "Subsidiary Guarantor" under the Senior Subordinated Indenture to the extent that such Subsidiaries have complied with Section 7.14 (provided, that Oshkosh European Holdings SL, Oshkosh Group BV and Geesink Group BV shall not be required to comply with such Section 7.14);
- (j) Contingent Obligations which are recorded as liabilities on the balance sheet of the Company and its Subsidiaries in accordance with GAAP;
- (k) Contingent Obligations aggregating up to \$20,000,000 in respect of which the Company or its Subsidiaries have contractual indemnification rights against a third party; and
- (l) other Contingent Obligations (except in respect of obligations of Leasing Subsidiaries) not exceeding at any time \$25,000,000 in the aggregate in respect of the Company and its Subsidiaries together.

8.09 Joint Ventures. The Company shall not, and shall not suffer or permit any Subsidiary to enter into any Joint Venture, other than (a) in the ordinary course of business and (b) in compliance with subsection 8.04(e).

8.10 Lease Obligations. The Company shall not, and shall not suffer or permit any Subsidiary to, create or suffer to exist any obligations of the Company or any Subsidiary for the payment of rent for any property under lease or agreement to lease, except for:

- (a) leases of the Company and of Subsidiaries in existence on the Second Restatement Date and any renewal, extension or refinancing thereof;
- (b) operating leases entered into by the Company or any Subsidiary after the Second Restatement Date in the ordinary course of business;

(c) leases entered into by the Company or any Subsidiary after the Second Restatement Date pursuant to sale-leaseback transactions entered into in the ordinary course of business; and

(d) capital leases other than those permitted under clauses (a) and (c) of this Section, entered into by the Company or any Subsidiary after the Second Restatement Date to finance the acquisition of equipment.

8.11 Restricted Payments. The Company shall not, and shall not suffer or permit any Subsidiary to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock, or purchase, redeem or otherwise acquire for value any shares of its capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding (collectively, "Restricted Equity Payments"); except that any Subsidiary may declare and make dividend payments and other distributions to its shareholders on a pro rata basis and the Company may:

(a) declare and make dividend payments or other distributions payable solely in its common stock;

(b) purchase, redeem or otherwise acquire shares of its 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

(c) declare or pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its 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 the lesser of (A) the sum of (1) the Company's consolidated net income for the period of four fiscal quarters ending with the second preceding fiscal quarter prior to the fiscal quarter in which such payment is made (if positive), plus (2) only to the extent necessary to permit the payment of up to \$5,000,000 in Restricted Equity Payments during any fiscal year, an amount equal to all or any portion of the Dividend Supplement Amount as designated in writing to the Agent by the Company at least five Business Days prior to the payment of such incremental amount, and (B) the sum of (1) \$6,000,000, plus (2) 7.5% of the Company's consolidated net income for the period specified in clause (A), and (ii) immediately after giving effect to such proposed action, no Default or Event of Default would exist (determined with respect to Sections 8.16, 8.17 and 8.18 on a pro forma basis as of the last day of the previous fiscal quarter).

8.12 ERISA. The Company shall not, and shall not suffer or permit any of its ERISA Affiliates to: (a) engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in liability of the Company in an aggregate amount in excess of \$3,000,000; or (b) engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

8.13 Change in Business. The Company shall not, and shall not suffer or permit any Subsidiary to, engage in any material line of business substantially different from those lines of business carried on by the Company and its Subsidiaries on the Second Restatement Date.

8.14 Accounting Changes. The Company 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 thereby to straight line depreciation and (iii) any other change which does not affect the calculations required to determine compliance with Section 8.16, 8.17, 8.18, 8.19 or 8.20 or (b) change the fiscal year of the Company or of any Subsidiary, except such changes which are required in order to conform the Acquired Companies to a September 30 fiscal year end.

8.15 Amendments to Charter and Agreements; Subordinated Indebtedness. The Company 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, including without limitation the Indebtedness evidenced by the Senior Subordinated Notes; provided that the Company and/or its Subsidiaries may enter into supplemental indentures to the Senior Subordinated Indenture in order to cause any Subsidiary which is or becomes a Subsidiary Guarantor hereunder and Windmill Ventures CV and its Subsidiaries to become guarantors under the Senior Subordinated Indenture, (b) directly or indirectly prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any such Indebtedness, except that (i) the Company may pay the Senior Subordinated Notes on the scheduled maturity date therefor in accordance with the terms thereof (including without limitation the terms of subordination set forth therein) as in effect on the Closing Date and (ii) the Company may apply an amount equal to 25% of the Net Proceeds realized upon any issuance of equity securities by the Company to the prepayment or repurchase of the Senior Subordinated Notes so long as (A) after giving effect thereto, the Company's Senior Debt to Consolidated EBITDA Ratio is less than 2.0 to 1.0 and (B) no Event of Default or Default has occurred and is continuing or would occur after giving effect thereto, determined in the case of clauses (A) and (B) (in respect of Sections 8.16, 8.17, 8.18, 8.19 and 8.20) on a pro forma basis as of the last day of the immediately preceding fiscal quarter, (c) make any amendment or modification to any terms or provisions of its Certificate or Articles of Incorporation or bylaws which is materially adverse to the Agent or the Lenders without the prior written consent of the Required Lenders or (d) issue any preferred stock. The Company shall not, and shall not permit any Subsidiary to, amend, waive, modify or terminate any material portion of any Senior Subordinated Debt Document. The Company will not designate any Indebtedness as "Designated Senior Indebtedness" under the Senior Subordinated Indenture.

8.16 Net Worth. The Company shall not permit its consolidated Net Worth at any time to be less than the sum of (a) \$275,000,000, plus (b) the aggregate net proceeds of all offerings and sales of equity securities by the Company or any Subsidiary after the Second Restatement Date, plus (c) 75% of the Company's positive consolidated net income, as determined in accordance with GAAP, for each fiscal quarter ending after the Second Restatement Date and on or prior to the date of determination.

8.17 Leverage Ratio. The Company shall not permit its Leverage Ratio as determined as of the last day of each fiscal quarter in any period set forth below to be greater than the ratio set forth below for such period:

Period	Ratio
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Second Restatement Date through 9/29/02	4.50:1.0
9/30/02 through 9/29/03	4.25:1.0
9/30/03 and thereafter	4.00:1.0

8.18 Minimum Consolidated EBITDA. The Company shall not permit its Consolidated EBITDA, as of the last day of any fiscal quarter for the period of four fiscal quarters ending on such date, to be less than \$110,000,000.

8.19 Minimum Domestic EBITDA. The Company shall not permit its Domestic EBITDA, as of the last day of any fiscal quarter for the period of four fiscal quarters ending on such date, to be less than \$90,000,000.

8.20 Domestic Tangible Assets. The Company shall not permit Domestic Tangible Assets at any time to be less than \$500,000,000.

8.21 Restrictive Agreements. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into any indenture, agreement, instrument or other arrangement which directly or indirectly prohibits or restrains, or has the effect of prohibiting or restraining, or imposes materially adverse conditions upon, the ability of any Subsidiary to (a) pay dividends or make other distributions (i) on its Capital Stock or (ii) with respect to any other interest or participation in, or measured by, its profits, (b) make loans or advances to the Company or any Subsidiary, (c) repay loans or advances from the Company or any Subsidiary or (d) transfer any of its properties or assets to the Company or any Subsidiary.

ARTICLE IX

EVENTS OF DEFAULT

9.01 Event of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment. Any Borrower fails to pay, (i) when and as required to be paid herein, any amount of principal of any Loan or of any L/C Obligation, or (ii) within five (5) days after the same becomes due, any interest, fee or any other amount payable hereunder or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty by the Company or any Subsidiary made or deemed made herein or in any other Loan Document, or contained in any certificate, document or financial or other statement by the Company, any Subsidiary, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect in any material respect on or as of the date made or deemed made; provided, that in the case of representations and warranties in Sections 6.09, 6.10,

6.12, 6.16, 6.17 and 6.18 hereof which are incorrect in any material respect solely with respect to the Acquired Companies and their Subsidiaries as a result of the consummation of the Geesink Acquisition, there shall be no Event of Default hereunder if such incorrect matter is corrected pursuant to Section 11.12 hereof; or

(c) Specific Defaults. The Company fails to perform or observe any term, covenant or agreement contained in any of Section 7.01, 7.02, 7.03 or 7.09 or in Article VIII; or

(d) Other Defaults. The Company or any Subsidiary party thereto fails to perform or observe any other term or covenant contained in this Agreement or any other Loan Document, and such default shall continue unremedied for a period of 30 days after the date upon which written notice thereof is given to the Company by the Agent or any Lender; or

(e) Cross-Default. (i) The Company or any Subsidiary (A) fails to make any payment in respect of any Indebtedness or Contingent Obligation (other than in respect of Swap Contracts), having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$5,000,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure; or (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or Contingent Obligation, and such failure continues after the applicable grace or notice period, if any, specified in the relevant document on the date of such failure if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause such Indebtedness to be declared to be due and payable, or to be required to be repurchased, prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (1) any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (2) any Termination Event (as so defined) arising due to a "Tax Event Upon Merger" or a "Credit Event Upon Merger" as to which the Company or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than \$5,000,000; or (iii) the Company 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 L/C's), which in such event requires the making of payments in excess of \$5,000,000 in the aggregate, net of the proceeds of insurance policies and indemnity agreements in favor of the Company or any Subsidiary and received or reasonably expected to be received thereby.

(f) Insolvency; Voluntary Proceedings. Any Borrower or any Material Subsidiary (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary

course; (iii) commences any Insolvency Proceeding with respect to itself; or
(iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against the Company or any Subsidiary, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the Company's or any Subsidiary's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 60 days after commencement, filing or levy; (ii) the Company or any Subsidiary admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or

(iii) the Company or any Subsidiary acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business; or

(h) ERISA. (i) An ERISA Event shall occur with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Company or any ERISA Affiliate under Title IV of ERISA to such Pension Plan or Multiemployer Plan or to the PBGC in an aggregate amount for all such Pension Plans and Multiemployer Plans in excess of \$5,000,000; (ii) the aggregate amount of Unfunded Pension Liability among all Pension Plans and Multiemployer Plans at any time exceeds \$5,000,000 (determined, in respect of Multiemployer Plans, by reference to the Unfunded Person Liability for which the Company or any ERISA Affiliate may be liable); or (iii) the Company or any ERISA Affiliate shall fail 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 \$5,000,000; or

(i) Monetary Judgments. One or more non-interlocutory judgments, non-interlocutory orders, decrees or arbitration awards is entered against the Company or any Subsidiary involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) as to any single or related series of transactions, incidents or conditions, of \$5,000,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of 10 days after the entry thereof; or

(j) Non-Monetary Judgments. Any non-monetary judgment, order or decree is entered against the Company or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(k) Change of Control. There occurs any Change of Control; or

(l) Loss of Licenses. Any Governmental Authority revokes or fails to renew any material license, permit or franchise of the Company or any Material Subsidiary, or the Company or any Material Subsidiary for any reason loses any material license, permit or

franchise, or the Company 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 material license, permit or franchise; or

(m) Guarantor Defaults. 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 subsections (f) or (g) of this Section occurs with respect to any Guarantor; or

(n) Invalidity of Subordination Provisions. The subordination provisions of the Senior Subordinated Debt Documents or any agreement or instrument governing any other subordinated debt with an outstanding principal amount of \$5,000,000 or more are for any reason revoked or invalidated, or otherwise cease to be in full force and effect, any Person contests in any manner the validity or enforceability thereof, or the Indebtedness hereunder is for any reason subordinated or does not have the priority contemplated by this Agreement or such subordination provisions; or

(o) Collateral.

(i) any provision of any Collateral Document shall for any reason cease to be valid and binding on or enforceable against the Company or any Subsidiary party thereto or the Company 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 Permitted Liens.

9.02 Remedies. If any Event of Default has occurred and is continuing, the Agent shall, at the request of, or may, with the consent of, the Required Lenders,

(a) declare the Commitment of each Lender to make Loans and any obligation of the Issuer to Issue Letters of Credit to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare an amount equal to the Dollar Equivalent of the maximum aggregate amount that is or at any time thereafter may become available for drawing under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit) to be immediately due and payable, and declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable,

without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Borrower; and

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided, however, that upon the occurrence of any event specified in subsection

(f) or (g) of Section 9.01 (in the case of clause (i) of subsection (g) upon the expiration of the 60-day period mentioned therein), the obligation of each Lender to make Loans and any obligation of the Issuer to Issue Letters of Credit shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Agent, the Issuer or any Lender.

9.03 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE X

THE AGENT

10.01 Appointment and Authorization; "Agent". (a) Each Lender hereby irrevocably (subject to Section 10.09) appoints, designates and authorizes the 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, the Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender, 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 the Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the 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) Each Issuer shall act on behalf of the 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 the Agent may agree at the request of the Required Lenders to act for such Issuer with respect thereto; provided, however, that such Issuer shall have all of the benefits and immunities (i) provided to the Agent in this Article X with respect to any acts taken or omissions suffered by the Issuer 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 "Agent", as used in this Article X, included such Issuer with respect to such acts or omissions, and (ii) as additionally provided in this Agreement with respect to such Issuer.

10.02 Delegation of Duties. The 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. The Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

10.03 Liability of Agent. None of the Agent-Related Persons shall (a) 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), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by the Company or any Subsidiary or Affiliate of the Company, 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 the Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Company or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender 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 the Company or any of the Company's Subsidiaries or Affiliates.

10.04 Reliance by Agent. (a) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, 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 the Company), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the 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. The 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 the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 5.01, each Lender that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by the Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender.

10.05 Notice of Default. The 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 the Agent for the account of the Lenders, unless the Agent shall have received written notice from a Lender or the Company referring to

this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". The Agent will notify the Lenders of its receipt of any such notice. The Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Article IX; provided, however, that unless and until the Agent has received any such request, the 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 the Lenders.

10.06 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by the Agent hereinafter taken, including any review of the affairs of the Company and its Subsidiaries, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to the Agent that it has, independently and without reliance upon any 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 the Company and its Subsidiaries, the value of and title to any Collateral, 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 the Company hereunder. Each Lender also represents that it will, independently and without reliance upon any 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 the Company. Except for notices, reports and other documents expressly herein required to be furnished to the Lenders by the Agent, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Company which may come into the possession of any of the Agent-Related Persons.

10.07 Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Company and without limiting the obligation of the Company to do so), in accordance with such Lender's Pro Rata Share of all Loans and Commitments, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to the Agent-Related Persons of any portion of such Indemnified Liabilities resulting from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the 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 the Agent is not reimbursed for such expenses by or on behalf of the Company. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of the Agent.

10.08 Agent in Individual Capacity. BofA 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 the Company and its Subsidiaries and Affiliates as though BofA were not the Agent or an Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, BofA or its Affiliates may receive information regarding the Company or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Company or such Subsidiary) and acknowledge that the Agent shall be under no obligation to provide such information to them. With respect to its Loans, BofA shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Agent or an Issuer.

10.09 Successor Agent. The Agent may, and at the request of the Required Lenders shall, resign as Agent upon 30 days' notice to the Lenders. If the Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders subject, so long as no Event of Default has occurred and is then continuing, to the consent of the Company, which shall not be unreasonably withheld or delayed. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the Agent may appoint, after consulting with the Lenders and the Company, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article X and Sections 11.04 and 11.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Notwithstanding the foregoing, however, BofA may not be removed as the Agent at the request of the Required Lenders unless BofA shall also simultaneously be replaced as an "Issuer" (if any letters of credit Issued by BofA are then outstanding) hereunder pursuant to documentation in form and substance reasonably satisfactory to BofA.

10.10 Withholding Tax. (a) (i) If any Lender is a "foreign corporation, partnership or trust" within the meaning of the Code and such Lender claims exemption from, or a reduction of, U.S. withholding tax under Sections 1441 or 1442 of the Code, such Lender agrees with and in favor of the Agent and the Company, to deliver to the Agent and the Company:

(A) if such Lender claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, two properly completed and executed copies of IRS Form W-8BEN before the payment of any interest in the first calendar year and before the payment of any interest in each third succeeding calendar year during which interest may be paid under this Agreement;

(B) if such Lender claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a

United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI before the payment of any interest is due in the first taxable year of such Lender and in each succeeding taxable year of such Lender during which interest may be paid under this Agreement; and

(C) such other form or forms as may be required under the Code or other laws of the United States as a condition to exemption from, or reduction of, United States withholding tax.

Such Lender agrees to promptly notify the Agent and the Company of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(ii) If any foreign Lender claims exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", such Lender agrees with and in favor of the Agent and the Company to deliver to the Agent and the Company a Form W-8, or any subsequent versions thereof or successors thereto (and, if such Lender delivers a Form W-8, a certificate representing that such Lender is not a "bank" for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Company and is not a controlled foreign corporation related to the Company (within the meaning of Section 864(d)(4) of the Code)).

(b) If any Lender claims exemption from, or reduction of, withholding tax under a United States tax treaty by providing IRS Form W-8BEN and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of the Company to such Lender, such Lender agrees to notify the Agent of the percentage amount in which it is no longer the beneficial owner of Obligations of the Company to such Lender. To the extent of such percentage amount, the Agent will treat such Lender's IRS Form W-8BEN as no longer valid.

(c) If any Lender claiming exemption from United States withholding tax by filing IRS Form W-8ECI with the Agent sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of the Company to such Lender, such Lender agrees to undertake sole responsibility for complying with the withholding tax requirements imposed by Sections 1441 and 1442 of the Code.

(d) If any Lender is entitled to a reduction in the applicable withholding tax, the Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. However, if the forms or other documentation required by subsection (a) of this Section are not delivered to the Agent, then the Agent may withhold from any interest payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax imposed by Sections 1441 and 1442 of the Code, without reduction.

(e) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Agent of a change in

circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify the Agent fully for all amounts paid, directly or indirectly, by the Agent as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Agent under this Section, together with all costs and expenses (including Attorney Costs). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of the Agent.

10.11 Collateral Matters. (a) The Agent is authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the 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) The Lenders irrevocably authorize the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent upon any Collateral (i) upon termination of the Commitments and payment in full of all Loans and all other Obligations known to the 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 the Company or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter;

(iv) constituting property leased to the Company 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 the Company 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 the Lenders, as the case may be, as provided in subsection 11.01(f). Upon request by the Agent at any time, the Lenders will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this subsection 10.11(b), provided that the absence of any such confirmation for whatever reason shall not affect the Agent's rights under this Section 10.11.

(c) Each Lender agrees with and in favor of each other (which agreement shall not be for the benefit of the Company or any Subsidiary) that the Company'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.

(d) While an Event of Default has occurred and is continuing, the Agent shall deliver a "Payment Blockage Notice" (as defined in the Senior Subordinated Indenture) to the Trustee under the Senior Subordinated Indenture at the direction or with the consent of the Required Lenders.

ARTICLE XI

MISCELLANEOUS

11.01 Amendments and Waivers. Except as expressly provided in the proviso in Section 8.04(d)(iv) or in Section 11.12, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Company or any applicable Subsidiary therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent at the written request of the Required Lenders) and the Company and acknowledged by the Agent, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders directly affected thereby and the Company and acknowledged by the Agent, do any of the following:

(a) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) except for increases pursuant to Section 2.09(c);

(b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document including without limitation any mandatory prepayment required pursuant to subsection 2.11(b);

(c) reduce the principal of, or the rate of interest specified herein on any Loan, or (subject to clause (iii) below) any fees or other amounts payable hereunder or under any other Loan Document;

(d) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which is required for the Lenders or any of them to take any action hereunder or reduce the percentage specified in the definition of "Required Lenders" or, without the consent of each Revolving Lender, "Required Revolving Lenders"; or

(e) amend this Section, or Section 2.18, or any provision herein providing for consent or other action by all Lenders;

(f) discharge all or substantially all of the Guarantors, or release all or substantially all of the Collateral except as otherwise may be provided in the Collateral Documents or except where the consent of the Required Lenders only is specifically provided for;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuer in addition to the Required Lenders or all the Lenders, as the case may be, affect the rights or duties of the Issuer under this Agreement or any L/C-Related Document relating to any Letter of Credit Issued or to be Issued by it, (ii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Required Lenders or all the Lenders, as the case may be, affect the rights or duties of the Agent under this Agreement or any

other Loan Document, (iii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Required Lenders or all the Lenders, as the case may be, affect the rights or duties of the Swing Line Lender under this Agreement or any other Loan Document, (iv) no amendment, waiver or consent shall, unless in writing and signed by the Offshore Currency Fronting Lender in addition to the Required Lenders or all of the Lenders, as the case may be, affect the rights or duties of the Offshore Currency Fronting Lender under this Agreement or any other Loan Document, (v) without limiting clauses (a) through (f) above, no amendment, waiver or consent shall, unless signed by Lenders holding a majority of a particular Loan (determined by reference to outstanding Commitments or, if no Commitments are then outstanding, outstanding principal amount), affect the rights of such Lenders to receive or defer payment in respect of such Loan, and (vi) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed by the parties thereto. Notwithstanding the foregoing, upon the execution and delivery of all documentation required by Section 2.09(c) to be delivered in connection with an increase to the Aggregate Revolving Loan Commitment, this Agreement shall be deemed amended without further action by any party to reflect, as applicable, the new Lenders and their new Revolving Loan Commitments and any increase in the Revolving Loan Commitment of any existing Lender.

11.02 Notices. (a) All notices, requests, consents, approvals, waivers and other communications shall be in writing (including, unless the context expressly otherwise provides, by facsimile transmission, provided that any matter transmitted by the Company by facsimile (i) shall be immediately confirmed by a telephone call to the recipient at the number specified on Schedule 11.02, and (ii) shall be followed promptly by delivery of a hard copy original thereof) and mailed, faxed or delivered, to the address or facsimile number specified for notices on Schedule 11.02; or, as directed to the Company or the Agent, to such other address as shall be designated by such party in a written notice to the other parties, and as directed to any other party, at such other address as shall be designated by such party in a written notice to the Company and the Agent.

(b) All such notices, requests and communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next-day) delivery, or transmitted in legible form by facsimile machine, respectively, or if mailed or delivered, upon delivery; except that notices pursuant to Article II, III or X to the Agent shall not be effective until actually received by the Agent, and notices pursuant to Article III to any Issuer shall not be effective until actually received by such Issuer at the address specified on Schedule 11.02.

(c) Any agreement of the Agent and the Lenders herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Company. The Agent and the Lenders shall be entitled to rely on the authority of any Person identifying himself or herself as, and reasonably appearing to be, a Person authorized by the Company to give such notice and the Agent and the Lenders shall not have any liability to the Company or other Person on account of any action taken or not taken by the Agent or the Lenders in good faith in reliance upon such telephonic or facsimile notice. The obligation of the Company to repay the Loans and L/C Obligations shall not be affected in any way or to any extent by any failure by the Agent and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Agent and the Lenders of a confirmation

which is at variance with the terms understood by the Agent and the Lenders to be contained in the telephonic or facsimile notice.

11.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, 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 hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11.04 Costs and Expenses. The Company shall:

(a) whether or not the transactions contemplated hereby are consummated, pay or reimburse BofA (including in its capacity as Agent and an Issuer) and the Arranger within five Business Days after demand (subject to subsection 5.01(e)) for all costs and expenses incurred by BofA (including in its capacity as Agent and Issuer) and the Arranger in connection with the development, preparation, delivery, administration, syndication and execution of, and any amendment, supplement, waiver or modification to (in each case, whether or not consummated), this Agreement, any Loan Document and any other documents prepared in connection herewith or therewith, and the consummation of the transactions contemplated hereby and thereby, including reasonable Attorney Costs incurred by BofA (including in its capacity as Agent and an Issuer) and the Arranger with respect thereto;

(b) pay or reimburse the Agent, the Arranger and each Lender within five Business Days after demand (subject to subsection 5.01(e)) for all costs and expenses (including Attorney Costs) incurred by them in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or any other Loan Document during the existence of an Event of Default or after acceleration of the Loans (including in connection with any "workout" or restructuring regarding the Loans, and including in any Insolvency Proceeding or appellate proceeding); and

(c) pay or reimburse BofA (including in its capacity as Agent) within five Business Days after demand (subject to subsection 5.01(e)) for all reasonable appraisal (including the allocated cost of internal appraisal services), audit, environmental inspection and review (including the allocated cost of such internal services), search and filing costs, fees and expenses, incurred or sustained by BofA (including in its capacity as Agent) in connection with the matters referred to under subsections (a) and (b) of this Section.

11.05 Company Indemnification. (a) The Company shall indemnify, defend and hold the Agent-Related Persons, and each Lender and each of its respective officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loans, the termination of the Letters of Credit and the termination, resignation or replacement of the Agent or replacement of any Lender or assignment by any Lender of its Loans or Commitments) be imposed on, incurred by or asserted against any Indemnified Person arising out of this Agreement or any document contemplated by or referred to herein, or the transactions

contemplated hereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any Insolvency Proceeding or appellate proceeding) related to or arising out of this Agreement or the Loans or Letters of Credit or the use of the proceeds thereof or related to any Offshore Currency transactions entered into in connection herewith, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided, that the Company shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities resulting from (i) the gross negligence or willful misconduct of such Indemnified Person or (ii) any proceeding initiated by the Agent against any Lender (except to the extent arising from a breach by such Lender of its obligations hereunder) or by any Lender against the Agent or any other Lender (except to the extent arising from a breach by the Agent or such Lender, as the case may be, of its obligations hereunder). The agreements in this Section shall survive payment of all other Obligations.

(b) (i) The Company shall indemnify, defend and hold harmless each Indemnified Person, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including Attorney Costs and the allocated cost of internal environmental audit or review services), which may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, with respect to any Environmental Claim arising out of or related to any property, whether or not subject to a Mortgage in favor of the Agent or any Lender, or arising out of or related to any operations of the Company or any Subsidiary. No action taken by legal counsel chosen by the Agent or any Lender in defending against any such investigation, litigation or proceeding or requested remedial, removal or response action shall vitiate or any way impair the Company's obligation and duty hereunder to indemnify and hold harmless the Agent and each Lender.

(ii) In no event shall any site visit, observation, or testing by the Agent or any Lender (or any contractee of the Agent or any Lender) be deemed a representation or warranty that Hazardous Materials are or are not present in, on, or under, the site, or that there has been or shall be compliance with any Environmental Law. Neither the Company nor any other Person is entitled to rely on any site visit, observation, or testing by the Agent or any Lender. Neither the Agent nor any Lender owes any duty of care to protect the Company or any other Person against, or to inform the Company or any other party of, any Hazardous Materials or any other adverse condition affecting any site or property. The Agent or any Lender may, at its discretion, disclose to the Company or any other Person any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the Agent or any Lender. The Company understands and agrees that the Agent and the Lenders make no warranty or representation to the Company or any other Person regarding the truth, accuracy or completeness of any such report or findings that may be disclosed. The Company also understands that, depending upon the results of any site visit, observation or testing by the Agent or any Lender and disclosed to the Company, the Company may have a legal obligation to notify one or more environmental agencies of the results and that such reporting requirements are site-specific and are to be evaluated by the Company without advice or assistance from the Agent or any Lender.

(c) The obligations in this Section shall survive payment of all other Obligations. At the election of any Indemnified Person, the Company shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Person's sole discretion, at the sole cost and expense of the Company. All amounts owing under this Section shall be paid within 30 days after demand.

11.06 Marshalling; Payments Set Aside. Neither the Agent nor the Lenders shall be under any obligation to marshal any assets in favor of any Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that any Borrower makes a payment to the Agent or the Lenders, or the Agent or the Lenders exercise their right of set-off, and such payment or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its pro rata share of any amount so recovered from or repaid by the Agent.

11.07 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Company may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent and each Lender.

11.08 Assignments, Participations, etc. (a) Any Lender may, with the written consent of the Company at all times other than during the existence of an Event of Default and the Agent, the Swing Line Lender, the Offshore Currency Fronting Lender and, in respect of assignments of Revolving Loans or a Revolving Loan Commitment, the Issuer, which consents shall not be unreasonably withheld or delayed, at any time assign and delegate to one or more Eligible Assignees (each an "Assignee") all, or any part of all, of the Loans, the Commitments, the L/C Obligations and the other rights and obligations of such Lender hereunder, in a minimum amount of \$1,000,000 or, if less, the total amount of such Lender's outstanding Loans and/or Commitments (provided that (x) no written consent of the Company, the Agent, the Swing Line Lender, the Offshore Currency Fronting Lender or the Issuer shall be required in connection with any assignment and delegation by a Lender to an Eligible Assignee that is a Lender or an Affiliate of such Lender or any Approved Fund and (y) no consent of the Swing Line Lender, the Offshore Currency Fronting Lender or the Issuer shall be required in respect of any assignment and delegation consisting solely of Term Loans); provided, however, that the Company and the Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall have been given to the Company and the Agent by such Lender and the Assignee; (ii) such Lender and its Assignee shall have delivered to the Company and the Agent an Assignment and Acceptance in the form of Exhibit D ("Assignment and Acceptance") together with any Note or Notes subject to such assignment and (iii) the assignor Lender or Assignee has paid to the Agent a processing fee in the amount of \$3,500; provided, that in the case of contemporaneous assignments by a

Lender to more than one fund managed by the same investment advisor, only a single fee of \$3,500 shall be payable for all such contemporaneous assignments.

(b) From and after the date that the Agent notifies the assignor Lender that it has received (and, if required, provided its consent with respect to) an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder (including without limitation any obligations under Section 10.10) have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Documents.

(c) Within five Business Days after its receipt of notice by the Agent that it has received an executed Assignment and Acceptance and payment of the processing fee, (and, if required, provided that it consents to such assignment in accordance with subsection 11.08(a)), the Company shall execute and deliver to the Agent new Notes evidencing such Assignee's assigned Loans and Commitment and, if the assignor Lender has retained a portion of its Loans and its Commitment, replacement Notes in the principal amount of the Loans retained by the assignor Lender (such Notes to be in exchange for, but not in payment of, the Notes held by such Lender). Immediately upon each Assignee's making its processing fee payment under the Assignment and Acceptance, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender pro tanto.

(d) The Agent shall maintain a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount of the Loans owing to, each Lender from time to time. The entries in such register shall be conclusive, in the absence of manifest error, and the Company, the Agent and the Lenders shall treat each person whose name is recorded in such register as the owner of the Commitments and the Loans recorded therein for all purposes of this Agreement. The register shall be available for inspection by the Company, any Lender and their representatives, at any reasonable time and from time to time upon reasonable prior notice.

(e) Any Lender may at any time sell to one or more commercial banks or other Persons not Affiliates of the Company (a "Participant") participating interests in any Loans, the Commitment of that Lender and the other interests of that Lender (the "originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the originating Lender's obligations under this Agreement shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Company, each Issuer and the Agent shall continue to deal solely and directly with the originating Lender in connection with the originating Lender's rights and obligations under this Agreement and the other Loan Documents, and (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment, consent or waiver would require unanimous consent of the Lenders as

described in clause (a) (but only in respect of any increase of any Commitment of any Originating Lender), (b), (c) or (f) of the first proviso to Section

11.01. In the case of any such participation, the Participant shall be entitled to the benefit of Sections 4.01, 4.03 and 11.05 as though it were also a Lender hereunder, and if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

(f) Notwithstanding any other provision in this Agreement, (i) any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement and the Notes held by it in favor of any Federal Reserve Bank in accordance with Regulation A of the FRB or U.S. Treasury Regulation 31 CFR ss.203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law and (ii) any Lender that is a fund that invests in bank loans may, without the consent of the Agent or the Company, pledge all or any portion of its rights under and interest in this Agreement to any trustee or to any other representative of holders of obligations owed or securities issued by such fund as security for such obligations or securities; provided, that any transfer to any Person upon the enforcement of such pledge or security interest may only be made subject to Section 11.08.

11.09 Confidentiality. Each Lender agrees to take and to cause its Affiliates to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information provided to it by the Company or any Subsidiary, or by the Agent on the Company's or such Subsidiary's behalf, under this Agreement or any other Loan Document, and neither it nor any of its Affiliates shall use any such information other than in connection with or in enforcement of this Agreement and the other Loan Documents or in connection with other business now or hereafter existing or contemplated with the Company or any Subsidiary; except to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by the Lender or its Affiliates, or (ii) was or becomes available on a non-confidential basis from a source other than the Company, provided that such source is not bound by a confidentiality agreement with the Company known to the Lender; provided, however, that any Lender may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which the Lender is subject or in connection with an examination of such Lender by any such authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable Requirement of Law; (D) to the extent reasonably required in connection with any litigation or proceeding involving the Company to which the Agent, any Lender or their respective Affiliates may be party; (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (F) to such Lender's independent auditors and other professional advisors; (G) to any Participant or Assignee, actual or potential, provided that such Person agrees in writing to keep such information confidential to the same extent required of the Lenders hereunder; (H) as to any Lender or its Affiliate, as expressly permitted under the terms of any other document or agreement regarding confidentiality to which the Company or any Subsidiary is party or is deemed party with such Lender or such Affiliate; (I) to

its Affiliates, provided that such Person is advised of the confidentiality requirements set forth herein; and (J) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about such Lender's investment portfolio in connection with ratings issued with respect to such Lender.

11.10 Set-off. In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists or the Loans have been accelerated, each Lender is authorized at any time and from time to time, without prior notice to any Borrower, any such notice being waived by each Borrower to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of such Borrower against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not the Agent or such Lender shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the Company and the 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.

11.11 Automatic Debits of Fees. With respect to any commitment fee, arrangement fee, letter of credit fee or other fee, or any other cost or expense (including Attorney Costs) due and payable to the Agent, any Issuer, BofA or the Arranger under the Loan Documents, the Company hereby irrevocably authorizes BofA to debit any deposit account of the Company with BofA in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense; provided, that so long as no Event of Default has occurred and is continuing, BofA has given notice to the Company thereof not later than 9:00 a.m. (local time) on the date of such debit. If there are insufficient funds in such deposit accounts to cover the amount of the fee or other cost or expense then due, such debits will be reversed so as not to create an overdraft (in whole or in part, in BofA's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section shall be deemed a set-off.

11.12 Supplements to Schedules. The Company and its Subsidiaries may, within 120 days after the Second Restatement Date, amend or supplement Schedules 6.10, 6.12, 6.16, 6.17, 6.18, 7.04, 8.01 in order to accurately and completely reflect the information required to be included therein as a result of the Geesink Acquisition by delivering (effective upon receipt) to the Agent and each Lender a copy of such revised Schedule or Schedules which shall (i) be dated the date of delivery, (ii) be certified by a Responsible Officer as true, complete and correct as of such date and as delivered in replacement for the corresponding Schedule or Schedules previously in effect, and (iii) show in reasonable detail (by blacklining or other appropriate graphic means) the changes from each such corresponding predecessor Schedule. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, in the event that the Required Lenders determine based upon such revised Schedule (whether individually or in the aggregate or cumulatively) that there has been a Material Adverse Effect since the Second Restatement Date, the Lenders shall have no further obligation to fund additional Loans hereunder.

11.13 Notification of Addresses, Lending Offices, Etc. Each Lender shall notify the Agent in writing of any changes in the address to which notices to the Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Agent shall reasonably request.

11.14 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

11.15 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

11.16 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Borrowers, the Lenders, the Agent and the Agent-Related Persons, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

11.17 Governing Law and Jurisdiction. (a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAW OF THE STATE OF ILLINOIS (WITHOUT REGARD TO CONFLICTS OF LAW PROVISIONS THEREOF); PROVIDED THAT THE BORROWERS, THE AGENT AND THE LENDERS 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 ILLINOIS OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE BORROWERS, THE AGENT AND THE LENDERS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE BORROWERS, THE AGENT AND THE LENDERS 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 THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. THE BORROWERS, THE AGENT AND THE LENDERS EACH WAIVE PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY ILLINOIS LAW.

11.18 WAIVER OF JURY TRIAL. THE BORROWERS, THE LENDERS AND THE AGENT EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AGENT-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE BORROWERS, THE LENDERS AND THE AGENT EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

11.19 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 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 each Borrower in respect of any such sum due from it to the 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 Agent or such Lender of any sum adjudged to be so due in the Judgment Currency, the 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 Agent or such Lender in the Agreement Currency, each Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the 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 Agent or such Lender in such currency, the Agent or such Lender agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

11.20 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Borrowers, the Lenders and the Agent, and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

11.21 Second Restatement Date. The Company, each Lender and the Agent agree that on the Second Restatement Date the following transactions shall be deemed to occur automatically, without further action by any party hereto:

- (a) The Prior Credit Agreement shall be deemed to be amended and restated in its entirety in the form of this Agreement.

(b) Notwithstanding any contrary provision contained in this Agreement or in any Loan Document, each Letter of Credit which is then outstanding under the Prior Credit Agreement and identified on Schedule 1.01 hereto (each an "Existing Letter of Credit") shall be deemed a Letter of Credit issued and outstanding pursuant to Article III of this Agreement and each Revolving Lender shall be deemed to have irrevocably and unconditionally purchased and received from the Issuer, without recourse, representation or warranty, an undivided participation interest equal to its pro-rata share of the face amount of each Existing Letter of Credit and each draw paid by such Issuer thereunder.

The Company, each Lender, and the Agent agree that (i) the restatement transactions provided in the foregoing sentence shall not be effective until the execution of this Agreement by all of the parties hereto and the satisfaction of the conditions precedent set forth in Section 5.01 hereof; (ii) all terms and conditions of the Prior Credit Agreement which are amended and restated by this Agreement shall remain effective until such amendment and restatement becomes effective hereunder, and thereafter shall continue to be effective only as amended and restated by this Agreement and (iii) the representations, warranties and covenants set forth herein shall become effective concurrently with the execution of this Agreement by all of the parties hereto.

11.22 Notes. Notwithstanding anything to the contrary contained in this Agreement, the Borrower and each Lender which is a party to the Prior Credit Agreement agree that, no new Notes will be issued hereunder with respect to Term Loan A and the Revolving Loans and that each Term Loan A Note and Revolving Loan Note issued to it under the Prior Credit Agreement shall remain outstanding and shall evidence the applicable Lender's Loans hereunder with respect to such Term Loan A and Revolving Loans.

11.23 Return of Notes. Each Lender which was a party to the Original Credit Agreement agrees that it will promptly return to the Company for cancellation any "Notes" issued to it under the Original Credit Agreement.

11.24 Collateral Documents. Each Lender hereby consents to (and authorizes the Agent to execute on the Second Restatement Date) such amendment, reaffirmation and joinder agreements with respect to the Collateral Documents as may be satisfactory to the Agent.

ARTICLE XII

COMPANY GUARANTY

12.01 The Guaranty. In order to induce the Lenders to enter into this Agreement and to extend credit hereunder and in recognition of the direct benefits to be received by the Company from the proceeds of the Loans and the issuance of the Letters of Credit, the Company hereby agrees with the Lenders as follows: the Company hereby unconditionally and irrevocably guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, acceleration or otherwise, of any and all of the Guaranteed Obligations of the Subsidiary Borrowers to the Guaranteed Creditors. If any or all of the Guaranteed

Obligations of such Borrowers to the Guaranteed Creditors becomes due and payable hereunder, the Company unconditionally promises to pay such indebtedness to the Agent and/or the Lenders, on demand, together with any and all expenses which may be incurred by the Agent or the Lenders in collecting any of the Guaranteed Obligations. If claim is ever made upon any Guaranteed Creditor for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and any of the aforesaid payees repays all or part of said amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Borrowers), then and in such event the Company agrees that any such judgment, decree, order, settlement or compromise shall be binding upon the Company, notwithstanding any revocation of this Guaranty or other instrument evidencing any liability of any Borrower, and the Company shall be and remain liable to the aforesaid payees hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

12.02 Insolvency. Additionally, the Company unconditionally and irrevocably guarantees the payment of the Dollar Equivalent of any and all of the Guaranteed Obligations of the Subsidiary Borrowers to the Guaranteed Creditors whether or not due or payable by any Borrower upon the occurrence of any of the events specified in Sections 9.01(f) or (g), and unconditionally promises to pay the Dollar Equivalent of such Guaranteed Obligations to the Guaranteed Creditors, or order, on demand, in lawful money of the United States.

12.03 Nature of Liability. The liability of the Company hereunder is exclusive and independent of any security for or other guaranty of the Guaranteed Obligations of any Borrower whether executed by the Company, any other guarantor or by any other party, and the liability of the Company hereunder is not affected or impaired by (a) any direction as to application of payment by any Borrower or by any other party; or (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Guaranteed Obligations of any Borrower; or (c) any payment on or in reduction of any such other guaranty or undertaking; or (d) any dissolution, termination or increase, decrease or change in personnel by any Borrower; or (e) any payment made to any Guaranteed Creditor on the Guaranteed Obligations which any such Guaranteed Creditor repays to any Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and the Company waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

12.04 Independent Obligation. The obligations of the Company hereunder are independent of the obligations of any other guarantor, any other party or any Borrower, and a separate action or actions may be brought and prosecuted against the Company whether or not action is brought against any other guarantor, any other party or any Borrower and whether or not any other guarantor, any other party or any Borrower is joined in any such action or actions. The Company waives, to the full extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by a Borrower or other circumstance which operates to toll any statute of limitations as to such Borrower shall operate to toll the statute of limitations as to the Company's obligations under this Article XII.

12.05 Authorization. The Company authorizes the Guaranteed Creditors without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the rate of interest thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and the Guaranty herein made shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset thereagainst;

(c) exercise or refrain from exercising any rights against any Borrower or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, guarantors, Borrowers or other obligors;

(e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Borrower to its creditors other than the Guaranteed Creditors;

(f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of any Borrower to the Guaranteed Creditors regardless of what liability or liabilities of the Company or any Borrower remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, this Agreement or any of the instruments or agreements referred to herein, or otherwise amend, modify or supplement this Agreement or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Company from its liabilities under this Guaranty.

12.06 Reliance. It is not necessary for any Guaranteed Creditor to inquire into the capacity or powers of any Borrower or the officers, directors, partners or agents acting or purporting to act on their behalf, and any Guaranteed Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

12.07 Subordination. Any of the indebtedness of each Borrower relating to the Guaranteed Obligations now or hereafter owing to the Company is hereby subordinated to the

Guaranteed Obligations of such Borrower owing to the Guaranteed Creditors, and if the Agent so requests at a time when an Event of Default exists, all such indebtedness relating to the Guaranteed Obligations of such Borrower to the Company shall be collected, enforced and received by the Company for the benefit of the Guaranteed Creditors and be paid over to the Agent on behalf of the Guaranteed Creditors on account of the Guaranteed Obligations of such Borrower to the Guaranteed Creditors, but without affecting or impairing in any manner the liability of the Company under the other provisions of this Guaranty. Prior to the transfer by the Company of any note or negotiable instrument evidencing any of the indebtedness relating to the Guaranteed Obligations of such Borrower to the Company, the Company shall mark such note or negotiable instrument with a legend that the same is subject to this subordination. Without limiting the generality of the foregoing, the Company hereby agrees with the Guaranteed Creditors that it will not exercise any right of subrogation which it may at any time otherwise have as a result of this Guaranty (whether contractual, under Section 509 of the Bankruptcy Code or otherwise) until all Guaranteed Obligations have been irrevocably paid in full in cash.

12.08 Waiver.

- (a) The Company waives any right (except as shall be required by applicable statute and cannot be waived) to require any Guaranteed Creditor to
- (i) proceed against any Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any security held from any Borrower, any other guarantor or any other party or (iii) pursue any other remedy in any Guaranteed Creditor's power whatsoever. The Company waives any defense based on or arising out of any defense of any Borrower, any other guarantor or any other party, other than payment in full of the Guaranteed Obligations, based on or arising out of the disability of any Borrower, any other guarantor or any other party, or the validity, legality or unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment in full of the Guaranteed Obligations. The Guaranteed Creditors may, at their election, foreclose on any security held by the Agent or any other Guaranteed Creditor by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Guaranteed Creditors may have against any Borrower or any other party, or any security, without affecting or impairing in any way the liability of the Company hereunder except to the extent the Guaranteed Obligations have been paid. The Company waives any defense arising out of any such election by the Guaranteed Creditors, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the Company against any Borrower or any other party or any security.
- (b) Except as otherwise expressly provided in this Agreement, the Company waives all presentments, demands for performance, protests and notices, including without limitation notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurring of new or additional Guaranteed Obligations. The Company assumes all responsibility for being and keeping itself informed of each Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks which the Company assumes and incurs hereunder, and

agrees that the Agent and the Lenders shall have no duty to advise the Company of information known to them regarding such circumstances or risks.

12.09 Nature of Liability. It is the desire and intent of the Company and the Guaranteed Creditors that this Guaranty shall be enforced against the Company to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If, however, and to the extent that, the obligations of the Company under this Guaranty shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers), then the amount of the Guaranteed Obligations shall be deemed to be reduced and the Company shall pay the maximum amount of the Guaranteed Obligations which would be permissible under applicable law.

[signature pages follow]

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

OSHKOSH TRUCK CORPORATION

By: /s/ Scott :L. Ney

Title: Vice President and Treasurer

BANK OF AMERICA, N.A., as Agent

By: /s/ David A. Johanson

Title: Vice President

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

By: /s/ Charles W. A. Hagel

Title: Senior Vice President

BANK ONE, NA (Main Office Chicago), as Syndication Agent

By: /s/ A. F. Maggioe

Title: Director, Capital Markets

FIRSTAR, N.A.

By: /s/ _____

Title: Vice President

FIRST UNION NATIONAL BANK

By: /s/ Daniel Evans _____

Title: Managing Director

HARRIS TRUST AND SAVINGS BANK

By: /s/ George M. Ohly _____

Title: Vice President

SUNTRUST BANK

By: /s/ Donald L. Gaudette, Jr. _____

Title: Director

THE BANK OF NEW YORK

By: /s/ Joshua Feldman _____

Title: Vice President

BANK OF SCOTLAND

By: /s/ Joseph Fratus _____

Title: Vice President

**LASALLE BANK NATIONAL
ASSOCIATION**

By: /s/ Lou D. Banach

Title: Vice President and Senior Lender

COMERICA BANK

By: /s/

Title: Vice President

THE FUJI BANK, LIMITED

By: /s/ Nobuoki Koike

Title: Senior Vice President

THE NORTHERN TRUST COMPANY

By: /s/

Title: Vice President

M&I MARSHALL & ILSLEY BANK

By: /s/ Ronald J. Carey

Title: Vice President

CREDIT LYONNAIS CHICAGO BRANCH

By: /s/

Title: Vice President

STANWICH LOAN FUNDING LLC

By: /s/ Ann E. Morris

Title: Assistant Vice President

OLYMPIC FUNDING TRUST, SERIES 1999-1

By: /s/ Ann E. Morris

Title: Authorized Agent

MURFIELD TRADING LLC

By: /s/ Ann E. Morris

Title: Assistant Vice President

PPM SPYGLASS FUNDING TRUST

By: /s/ Ann E. Morris

Title: Authorized Agent

RIVIERA FUNDING LLC

By: /s/ Ann E. Morris

Title: Assistant Vice President

**STEIN ROE FLOATING RATE LIMITED
LIABILITY COMPANY**

By: /s/ Brian W. Good

Title: Senior Vice President

**LIBERTY - STEIN ROE ADVISOR
FLOATING RATE ADVANTAGE FUND,
By: Stein Roe & Farnham, As Advisor**

By: /s/ Brian W. Good

*Title: Senior Vice President and
Portfolio Manager*

SEQUILS-CUMBERLAND I, LTD.
as a Lender
By: Deerfield Capital Management LLC
as its Collateral Manager

By: /s/ Dale R. Burrow

Title: Senior Vice President

End of Filing

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