
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

Current Report Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report: **February 23, 2004**

Date of earliest event reported: **February 17, 2004**

LKQ CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-50404
(Commission File
Number)

36-4215970
(IRS Employer
Identification No.)

120 North LaSalle Street, Suite 3300
Chicago, IL 60602
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(312) 621-1950**

N/A
(Former name or former address, if changed since last report)

Item 5. Other Events.

Acquisition of Global Trade Alliance, Inc.

On February 23, 2004, LKQ Corporation (“LKQ”) announced that it had acquired Global Trade Alliance, Inc. (“GTA”), one of the largest suppliers of aftermarket collision automotive replacement parts in the Midwest. Pursuant to the Stock Purchase Agreement (the “Agreement”), dated as of February 20, 2004, by and among LKQ and the shareholders of GTA (the “Shareholders”), LKQ paid the Shareholders a total consideration of \$30 million, \$1.5 million of which was in LKQ common stock and the balance of which was in the form of cash and assumed debt. On February 23, 2004, LKQ issued a press release announcing the GTA acquisition and the successful completion of its new credit facility as described below. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference. A copy of the Agreement is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

New Credit Facility

LKQ also announced that it completed a new credit facility effective February 17, 2004. The \$75 million unsecured revolving credit facility is with Bank of America, N.A., LaSalle Bank National Association, Bank One, N.A. and National City Bank and replaces its previous secured credit facility. A copy of the new facility is attached hereto as Exhibit 99.3 and is incorporated herein by reference.

Item 7. Financial Statements and Exhibits.

(c) Exhibits.

Exhibit Number	Description of Exhibit
99.1	Press Release, dated February 23, 2004, of LKQ Corporation, announcing its acquisition of Global Trade Alliance, Inc. and the completion of LKQ’s new credit facility.
99.2	Stock Purchase Agreement by and among LKQ Corporation and Robert H. Cruikshank, Trustee and Rowena R. Cruikshank, Trustee, dated February 20, 2004.
99.3	Credit Agreement by and among LKQ Corporation, Bank of America, N.A., as Administrative Agent, LaSalle Bank National Association, as Syndication Agent, Bank One, NA, as Documentation Agent, National City Bank, as Co-Agent, and Banc of America Securities LLC, as Arranger, dated February 17, 2004.

SIGNATURE

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

Dated: February 23, 2004

LKQ CORPORATION

By: /s/ Mark T. Spears
Mark T. Spears
Senior Vice President and Chief Financial
Officer

LKQ Corporation Enters Aftermarket Automotive Parts Industry Through a Significant Acquisition

CHICAGO — (BUSINESS WIRE) — February 23, 2004 — LKQ Corporation (NASDAQ: LKQX), the largest nationwide provider of recycled OEM automotive replacement parts, today announced that it has acquired Global Trade Alliance, Inc., one of the largest suppliers of aftermarket collision automotive replacement parts in the Midwest. GTA operates primarily under the trade names Action Crash Parts and Midwest Fender.

Global Trade Alliance's revenue for the twelve months ended January 31, 2004 was approximately \$42.5 million. GTA operates over 20 locations serving 15 states primarily east of the Mississippi River. GTA has over 300 employees. LKQ paid \$30 million for the acquisition, \$1.5 million of which was in LKQ common stock and the balance of which was in cash and assumed debt.

"The acquisition of Global Trade Alliance is LKQ's entry into the aftermarket replacement parts industry, which complements our existing business of recycled replacement parts," said Joseph M. Holsten, President and Chief Executive Officer of LKQ. "The product line of GTA features exactly the type of parts that we often do not have in stock for our customers."

"The \$32 billion collision repair market is served approximately 12% by recycled OEM parts, 13% by aftermarket parts, and 75% by OEM parts," continued Mr. Holsten. "The entry into the aftermarket industry allows us to further leverage our sales and distribution network and will approximately double the addressable insured collision repair market for LKQ."

LKQ also announced that it completed a new credit facility effective February 17, 2004. The \$75 million unsecured revolving credit facility is with Bank of America, N.A., LaSalle Bank National Association, Bank One, N.A. and National City Bank and replaces its previous secured credit facility.

About LKQ Corporation

LKQ Corporation is the largest nationwide provider of recycled OEM automotive replacement parts and related services, with 40 sales and processing facilities and 11 redistribution centers that reach most major markets in the United States. Through its subsidiary Global Trade Alliance, Inc., LKQ is one of the largest suppliers in the Midwest of aftermarket collision automotive replacement parts, operating over 20 locations serving 15 states primarily east of the Mississippi River.

Forward Looking Statements

The statements in this press release that are not historical are forward looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements

regarding our expectations, beliefs, hopes, intentions or strategies. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us. Actual events or results may differ materially from those expressed or implied in the forward-looking statements as a result of various factors. These factors include the risk factors and other risks that are described in our Registration Statement on Form S-1 as declared effective on October 2, 2003 and in other reports filed by us from time to time with the Securities and Exchange Commission. We assume no obligation to update any forward-looking statement to reflect events or circumstances arising after the date on which it was made.

CONTACT: LKQ Corporation
Mark T. Spears, 312-621-1950
Senior Vice President and Chief Financial Officer
irinfo@lkqcorp.com

STOCK PURCHASE AGREEMENT

by and among

LKQ Corporation

and

Robert H. Cruikshank, Trustee and Rowena R. Cruikshank, Trustee

and

Robert H. Cruikshank and Rowena R. Cruikshank

Dated as of February 20, 2004

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is made and entered into as of the 20th day of February, 2004, by and among LKQ Corporation, a Delaware corporation ("LKQ"), Robert H. Cruikshank, Trustee of the Robert H. Cruikshank Restated Trust dated November 17, 2003, and Rowena R. Cruikshank, Trustee of the Rowena R. Cruikshank Restated Trust dated November 17, 2003 (collectively, the "Shareholders"), and Robert H. Cruikshank and Rowena R. Cruikshank (collectively, and the "Cruikshanks").

Recitals

The Shareholders own all of the issued and outstanding shares of capital stock of Global Trade Alliance, Inc. (the "Company"). The Shareholders desire to sell such shares to LKQ, and LKQ desires to purchase such shares from the Shareholders, all as herein provided and on the terms and conditions hereinafter set forth.

Covenants

In consideration of the mutual representations, warranties and covenants and subject to the conditions contained herein, the parties hereto agree as follows:

1. Purchase and Sale of the Shares

The Shareholders agree to and will sell, transfer, assign and deliver to LKQ at the Closing, and LKQ agrees to and will purchase and accept from the Shareholders, on the terms and subject to the conditions set forth in this Agreement, an aggregate of 500 shares of common stock, no par value, constituting all of the issued and outstanding shares of capital stock of the Company (the "Shares").

2. Purchase Price

2.1 Amount of the Purchase Price . As consideration for the Shares (the "Purchase Price"), LKQ agrees, subject to the terms, conditions and limitations set forth in this Agreement:

2.1.1 to pay to or for the account of the Shareholders in the manner specified in Section 3.2 hereof, an amount in cash equal to (a) \$28,500,000 minus (b) the dollar amount of all outstanding Applicable Debt of the Company at the Closing (the "Cash Consideration"); and

2.1.2 to deliver to the Shareholders in the manner specified in Section 3.2 hereof, a stock certificate for the number of shares of LKQ common stock, \$.01 par value ("LKQ Common Stock"), determined by dividing (a) \$1,500,000 by (b) the average of the closing prices of the LKQ Common Stock (as published in *The Wall Street Journal*) on the five business days immediately preceding the Closing (the "Stock Consideration").

2.2 Applicable Debt . As used herein, "Applicable Debt" shall mean the unpaid principal and accrued but unpaid interest under promissory notes issued by the Company (including long-term debt and the current portion thereof) properly recordable on the Company's

unaudited balance sheets as of the Closing Date under the line item account numbers set forth on Section 2.2 of the Disclosure Schedule attached hereto (the "Disclosure Schedule"), and specifically excluding, without limitation, obligations of the Company properly recordable as accounts payable, accrued expenses and taxes payable. The parties acknowledge and agree that (i) the Applicable Debt of the Company as of the Closing Date, and (ii) the cash to the Shareholders at Closing (after setting aside the required escrow and cost-sharing amounts) are as set forth on Section 2.2 of the Disclosure Schedule.

3. Closing

3.1 Closing . The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. local time at the offices of Carlile Patchen & Murphy LLP, 366 East Broad Street, Columbus, Ohio 43215 on (i) February 20, 2004, if all of the conditions set forth in Articles 7.0 and 8.0 hereof (the "Closing Conditions") have been satisfied or waived on or before that date; or (ii) the next business day after all of the Closing Conditions have been satisfied or waived, if not satisfied or waived until after February 20, 2004; or (iii) such other date as may be agreed upon in writing by the parties. If Closing has not been completed on or before March 31, 2004 or such later date as the parties may have agreed upon in writing, either party may terminate this Agreement by giving written notice to that effect to the other party at any time prior to the date upon which all of the Closing Conditions have been satisfied or waived. The date upon which Closing occurs is sometimes hereinafter referred to as the "Closing Date."

3.2 Procedure at the Closing . At the Closing, the parties agree to take the following steps in the order listed below (provided, however, that upon their completion all such steps shall be deemed to have occurred simultaneously):

3.2.1 The Shareholders shall deliver to LKQ the certificates, instruments and other documents required to be delivered by the Shareholders pursuant to Section 7.0.

3.2.2 LKQ shall deliver to the Shareholders the certificates, instruments and other documents required to be delivered by LKQ pursuant to Section 8.0.

3.2.3 The Shareholders shall deliver to LKQ certificates evidencing the Shares, duly endorsed in blank or accompanied by duly executed stock powers.

3.2.4 LKQ shall pay to the Shareholders the Cash Consideration by wire transfer or certified or bank cashier's check.

3.2.5 LKQ shall deliver to the Shareholders a copy of the certificates representing the Stock Consideration, and LKQ shall hold such original certificates in accordance with Section 9.1.4.

3.2.6 LKQ and the Shareholders shall execute and deliver a cross receipt acknowledging receipt from the other, respectively, of the Shares and the Purchase Price.

3.3 Post Closing Financial Statements . Within 45 days after the Closing Date, the Shareholders shall, with such assistance as may reasonably be required from LKQ, cause to be

prepared by the Company's current accounting firm and to be and delivered to LKQ an unaudited consolidated balance sheet and income statement for the Company in the form of a compilation report dated as of the Closing Date. The financial statements prepared pursuant to this Section shall not include the results of any transactions which LKQ causes the Company to undertake following the completion of the Closing (even if such transactions occur prior to the close of business on the Closing Date), but otherwise shall be calculated on the same basis, and using the same accounting methods and policies, as the financial statements of the Company referred to in Section 4.4 and the Company's most recently filed U.S. federal income tax return (subject to customary adjustments to reflect the differences between cash basis tax or statutory accounting and accrual accounting for financial reporting purposes and subject to the changes to accounting methods and policies which are described in Section 4.4 of the Disclosure Schedule) and shall demonstrate that the Company has net working capital at the Closing Date at least at the level of net working capital as listed on the Company's September 30, 2003 balance sheet reduced by \$100,000. For this purpose, "net working capital" shall mean the amount by which the total current assets of the Company exceed the total current liabilities of the Company. The parties acknowledge and agree that the net working capital of the Company at September 30, 2003 is set forth on Section 3.3 of the Disclosure Schedule. The reasonable cost of the financial statements prepared pursuant to this Section will be borne 50% by LKQ and 50% by the Shareholders. In the event net working capital at the Closing Date, as determined under this Section 3.3, is less than the net working capital of the Company as listed on the Company's September 30, 2003 balance sheet by more than \$100,000, the Damages which LKQ may claim under Section 9.1 relating to this Section 3.3 shall not exceed the amount of such excess over \$100,000.

4. Representations and Warranties of the Shareholders and the Cruikshanks

In order to induce LKQ to enter into this Agreement and to consummate the transactions contemplated hereunder, each of the Shareholders and the Cruikshanks jointly and severally makes the representations and warranties set forth below, each of which is independently relied upon by LKQ regardless of any investigation made or information obtained by LKQ. With respect to representations and warranties made by the Shareholders and the Cruikshanks in connection with this Agreement, any information specifically set forth and disclosed in any section of this Agreement, in any section of the Disclosure Schedule attached to this Agreement, or in any exhibit attached to this Agreement (each a "Location") shall be deemed to have been set forth and disclosed by the Shareholders and the Cruikshanks to the same extent in each and every other Location where the failure to repeat such information would otherwise cause the representations and warranties in or related to such Location to be inaccurate, incomplete or misleading.

4.1 Organization , Power and Authority of the Company . The Company is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation with corporate power and authority and all licenses and permits (except as described in Section 4.10 of the Disclosure Schedule and except with respect to licenses and permits the failure to possess which would not have a Material Adverse Effect) necessary to own or lease its properties and to carry on its business as it is now being conducted. Subject to the

information set forth in Section 4.1 of the Disclosure Schedule, the Company is legally qualified to transact business in each jurisdiction where it conducts business.

4.2 Capital Stock of the Company . The authorized, issued and outstanding capital stock of the Company is set forth in Section 4.2 of the Disclosure Schedule. All voting rights in the Company are vested exclusively in its shares of common stock, and there are no voting trusts, proxies or other agreements or understandings with respect to the voting of the capital stock of the Company. All of the issued and outstanding shares of common stock of the Company are validly authorized and issued, fully paid and non-assessable. Section 4.2 of the Disclosure Schedule sets forth the name and address of, and number of shares of common stock of the Company owned by, the Shareholders as of the date hereof. Except for this Agreement, there are no outstanding warrants, options or rights of any kind to acquire from the Company or the Shareholders any shares of common stock of the Company or securities of any kind, and there are no preemptive rights with respect to the issuance or sale of shares of capital stock of the Company. The Company has no obligation to acquire any of its issued and outstanding shares of common stock or any other security issued by it from any holder thereof.

4.3 No Subsidiaries . The Company has no direct or indirect equity interest in any other person or entity.

4.4 Financial Statements . Set forth in Section 4.4 of the Disclosure Schedule are the following financial statements of the Company:

4.4.1 audited balance sheet at June 30, 2003 and unaudited balance sheets at September 30, 2003 and January 31, 2004; and

4.4.2 audited statement of income and cash flows for the twelve months ended June 30, 2003 and unaudited statements of income and cash flows for the three months ended September 30, 2003 and seven months ended January 31, 2004.

Such financial statements (including the related notes thereto), have been prepared in conformity with generally accepted accounting principles (“GAAP”) applied on a basis consistent with prior periods (subject to the changes to accounting methods and policies described in Section 4.4 of the Disclosure Schedule), present fairly the financial position of the Company as of their respective dates, and the results of operations and cash flows for the Company for the periods presented therein, and reflect all adjustments necessary for the fair presentation of results for the periods presented.

4.5 Liabilities . Except as described in Section 4.5 of the Disclosure Schedule, the Company has no material liabilities or obligations, either accrued, absolute, contingent or otherwise, except: (i) to the extent reflected or taken into account in determining net worth in the unaudited balance sheet of the Company at January 31, 2004 (the “2004 Balance Sheet”) and not heretofore paid or discharged; (ii) to the extent clearly disclosed and specifically set forth in or incorporated by express reference in Section 4.5 of the Disclosure Schedule; and (iii) normal liabilities incurred in the ordinary course of business, consistent with prior practice, since the date of the 2004 Balance Sheet.

4.6 Tax Matters .

4.6.1 The Company has timely filed all tax returns and reports required to be filed by it, including without limitation all U.S. federal, state, and local tax returns, and has paid in full all taxes and other tax-related charges which have become due. Except as described in Section 4.6 of the Disclosure Schedule, the amounts provided in the 2004 Balance Sheet for the Company for taxes are adequate to cover all unpaid liabilities for all U.S. federal, state, and local taxes and other tax-related charges which were accrued through, or applicable to the period ended, September 30, 2003 and for which the Company may be liable in its own right or as a transferee of the assets of, or successor to, any other person or entity (collectively, the "Taxes"). Subject to the information set forth in Section 4.6 of the Disclosure Schedule, there is no tax deficiency proposed or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened against the Company. There are no material tax liens upon any property or assets of the Company. The Company has, to the best knowledge and belief of the Shareholders and the Cruikshanks, made all payments of estimated taxes when due in amounts sufficient to avoid the imposition of any penalty.

4.6.2 Subject to the information set forth in Section 4.6 of the Disclosure Schedule, all taxes and other assessments and levies which the Company was required by law to withhold or to collect have, to the best knowledge and belief of the Shareholders and the Cruikshanks, been duly withheld and collected, and have been paid over to the proper governmental entity or are being held by the Company for such payment, and all such withholdings and collections and all other payments due in connection therewith as of the date of the 2004 Balance Sheet are, to the best knowledge and belief of the Shareholders and the Cruikshanks, duly reflected on the 2004 Balance Sheet.

4.6.3 None of the tax returns of the Company is under audit or examination by any tax authority, and there are no outstanding agreements or waivers extending the statute of limitations applicable to any U.S. federal, state or local tax returns of the Company for any period.

4.6.4 The Company has not consented to have the provisions of Section 341(f)(2) of the Internal Revenue Code of 1986 (the "Code") apply, nor has the Company made any "qualified stock purchases," as defined in Section 338 of the Code.

4.6.5 The Shareholders shall, with such assistance as may reasonably be required from LKQ, cause to be prepared by the Company's current accounting firm at the Shareholders' expense all tax returns of or with respect to the Company that are required to be, but have not been, filed on or prior to the Closing Date, and all tax returns due after the Closing Date which pertain to taxable periods ending on or prior to the Closing Date.

4.7 Real Estate .

4.7.1 Section 4.7 of the Disclosure Schedule, to the best knowledge and belief of the Shareholders and the Cruikshanks, accurately and completely sets forth, with respect

to every parcel of real estate owned by the Company (the “Real Estate”): (i) the location, including address, thereof; (ii) the legal description and approximate size thereof; (iii) a brief description (including size, approximate year of completion, and function) of the principal improvements and buildings thereon, all of which are, to the best knowledge and belief of the Shareholders and the Cruikshanks, within the property, set-back and building lines; (iv) the approximate year acquired; and (v) the nature and amount of any mortgages, tax liens or other liens thereon (including without limitation any environmental liens).

4.7.2 Section 4.7 of the Disclosure Schedule, to the best knowledge and belief of the Shareholders and the Cruikshanks, accurately and completely sets forth, with respect to every parcel of real estate leased by the Company (the “Leasehold Premises”): (i) the lessor and lessee thereof and the date and term of the lease governing such property; (ii) the location, including address, thereof; (iii) the legal description and the approximate size thereof; (iv) a brief description (including size) of the principal improvements and buildings thereon, all of which are, to the best knowledge and belief of the Shareholders and the Cruikshanks, within the property, set-back and building lines of the Leasehold Premises; and (v) with respect to the “Affiliated Properties” (as defined in Section 7.7 hereof), the nature and amount of any mortgages, tax liens or other liens thereon (including without limitation any environmental liens). The Company will deliver to LKQ prior to the Closing accurate and complete copies of each of the leases covering the Leasehold Premises, and none of such leases shall have been amended or modified except to the extent that such amendments or modifications are disclosed in such copies or in Section 4.7 of the Disclosure Schedule. Subject to the information set forth in Section 4.7 of the Disclosure Schedule, all of the leases covering the Leasehold Premises are, to the best knowledge and belief of the Shareholders and the Cruikshanks, in full force and effect, and the Company is not, to the best knowledge and belief of the Shareholders and the Cruikshanks, in default or breach under the terms of any such lease. To the best knowledge and belief of the Shareholders and the Cruikshanks, no event has occurred which with the passage of time or the giving of notice or both would cause a material breach of or default under the terms of any such lease. The Company has no knowledge of any breach or anticipated breach by the other parties to any such lease.

4.7.3 To the best knowledge and belief of the Shareholders and the Cruikshanks, the Company has good and marketable title to each parcel of Real Estate owned by it and a valid leasehold interest in each of the Leasehold Premises, free and clear of all liens, mortgages, pledges, charges, encumbrances, assessments, restrictions, covenants and easements or title defects of any nature whatsoever, except for liens for real estate taxes not yet due and payable, and such imperfections of title and encumbrances, if any, as are not substantial in character, amount or extent and do not materially detract from the value, or interfere with the present use, of such properties or otherwise impair business operations in any material respect.

4.7.4 To the best knowledge and belief of the Shareholders and the Cruikshanks, the buildings located on the Real Estate and the Leasehold Premises are each in good operating condition, normal wear and tear excepted, and are in the aggregate sufficient to

satisfy the operating needs of the Company as and to the extent that the operations of the Company currently are being conducted..

4.7.5 To the best knowledge and belief of the Shareholders and the Cruikshanks, each parcel of the Real Estate and the Leasehold Premises: (i) has direct access to public roads or access to public roads by means of a perpetual access easement, such access being sufficient to satisfy the current and reasonably anticipated normal transportation requirements of the operations conducted at such parcel; (ii) is served by water, electricity and telephone utilities (except as described in Section 4.7 of the Disclosure Schedule), in such quantity and quality as are sufficient to satisfy the current and reasonably anticipated operating needs of the Company; and (iii) has the necessary and appropriate zoning as required by law to allow the Company to carry on its business as it is now being conducted.

4.7.6 The Company has not received any notice of (i) any condemnation proceeding with respect to any portion of the Real Estate or the Leasehold Premises, and, to the best knowledge and belief of the Shareholders and the Cruikshanks, no proceeding is contemplated by any governmental authority; or (ii) any special assessment which may affect the Real Estate or the Leasehold Premises, and, to the best knowledge and belief of the Shareholders and the Cruikshanks, no such special assessment is contemplated by any governmental authority.

4.8 Title to and Condition of Assets . The Company has good and marketable title to all of its assets (other than the items of personal property which it leases and the Real Estate and Leasehold Premises covered by Section 4.7), free and clear of all liens, mortgages, pledges, encumbrances or charges of every kind, nature, and description whatsoever, except those set forth in Section 4.8 of the Disclosure Schedule. To the best knowledge and belief of the Shareholders and the Cruikshanks, the fixed assets of the Company are in good operating condition, normal wear and tear excepted. Section 4.8 of the Disclosure Schedule sets forth the following information regarding the Company's rolling stock located at each of its business locations: (i) the book value at January 31, 2004, and (ii) the age of the rolling stock at such location. To the best knowledge and belief of the Shareholders and the Cruikshanks, and except as described in Section 4.8 of the Disclosure Schedule, (a) the inventory and supplies of the Company consist of items of a quality and quantity usable and salable in the normal course of the Company's business at values in the aggregate at least equal to the values at which such items are carried on its books; (b) the values of obsolete or slow-moving inventory and inventory of below standard quality, if any, have been written down to the lower of cost or realizable market values or have been written off; and (c) the value at which such inventories are carried on the 2004 Balance Sheet reflects the Company's normal inventory valuation policies, stating inventories at the lower of cost or market, all determined in accordance and consistent with past practices.

4.9 Receivables . The Company has previously delivered to LKQ a complete list of all receivables of the Company as of January 31, 2004 including due dates thereof, and including accounts receivable, factored accounts receivable, notes receivable and insurance proceeds receivable. All of the receivables listed thereon or set forth or reflected in the 2004 Balance Sheet, were, as of the dates as of which the information is given therein, and as of the Closing

Date all of the receivables of the Company will be, valid accounts receivable which are or will be current and collectible and which have been or will be, within 90 days after the Closing Date, collected in full except to the extent of an allowance for uncollectible receivables of 5%.

4.10 Licenses and Permits . Except with respect to licenses and permits the failure to possess which would not have a Material Adverse Effect and except as described in Section 4.10 of the Disclosure Schedule, the Company possesses all licenses and other required governmental or official approvals, permits or authorizations, the failure to possess which would have a Material Adverse Effect. All such licenses, approvals, permits and authorizations are in full force and effect, the Company is in compliance with their requirements, and no proceeding is pending or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened to revoke or amend any of them. Section 4.10 of the Disclosure Schedule contains an accurate and complete list of all such licenses, approvals, permits and authorizations. None of such licenses, approvals, permits and authorizations are or will be impaired or in any way affected by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

4.11 Proprietary Rights . To the best knowledge and belief of the Shareholders and the Cruikshanks, the Company possesses all proprietary rights, the failure to possess which would have a Material Adverse Effect, including without limitation patents, trade secrets, technology, know-how, copyrights, trademarks, trade names, and rights to any of the foregoing, necessary to carry on the Company's business as now being conducted without, to the best knowledge and belief of the Shareholders and the Cruikshanks, conflict with valid proprietary rights of others. To the best knowledge and belief of the Shareholders and the Cruikshanks, Section 4.11 of the Disclosure Schedule contains an accurate and complete list of all such proprietary rights (the "Proprietary Rights"). To the best knowledge and belief of the Shareholders and the Cruikshanks, except as set forth in Section 4.11 of the Disclosure Schedule, (i) the Company owns all right, title and interest in and to all of the Proprietary Rights, (ii) there have been no claims made against the Company for the assertion of the invalidity, abuse, misuse, or unenforceability of any of such rights, and there are no grounds for the same, (iii) the Company has not received any notice of conflict with the asserted rights of others within the last five years, and (iv) to the best knowledge and belief of the Shareholders and the Cruikshanks, the conduct of the business of the Company has not infringed any such rights of others.

4.12 Adequacy of Assets . To the best knowledge and belief of the Shareholders and the Cruikshanks, the assets and properties of the Company constitute, in the aggregate, all of the property necessary for the conduct of the Company's business in the manner in which and to the extent to which it is currently being conducted. Except as described in Section 4.12 of the Disclosure Schedule, the Company knows of no written or oral communication, fact, event or action which exists, or has occurred within 90 days prior to the date of this Agreement, which would tend to indicate that: any current customer of the Company which will account for over 2% of the total consolidated net sales of the Company for the twelve months ended December 31, 2003, or any current supplier to the Company of items essential to the conduct of its business, which items cannot be replaced by the Company at comparable cost to the Company and the loss of which would have a Material Adverse Effect, will terminate its business relationship with the Company. To the best knowledge and belief of the Shareholders and the Cruikshanks, none of the customer accounts of the Company have been designated by the appropriate governmental

authorities as a “small business set-aside” contract. None of the Shareholders and the Cruikshanks nor, to the best knowledge and belief of the Shareholders and the Cruikshanks, any officer, director or employee of the Company, or any affiliate of any of them, has any direct or indirect interest in any customer, supplier or competitor of the Company or in any person from whom or to whom the Company leases real or personal property, or in any other person with whom the Company is doing business, except as set forth in Section 4.12 of the Disclosure Schedule. Except as described in Section 4.12 of the Disclosure Schedule, the Company is not restricted by agreement from carrying on its business anywhere in the world.

4.13 Certain Documents and Information . Section 4.13 of the Disclosure Schedule accurately and completely lists the following: (i) each loan, credit agreement, guarantee, security agreement or similar document or instrument to which the Company is a party or by which it is bound; (ii) each lease of personal property to which the Company is a party or by which it is bound; (iii) any other agreement, contract or commitment to which the Company is a party or by which it is bound which involves a future commitment by the Company in excess of \$25,000 and which cannot be terminated without liability on 90 days or less notice; (iv) each power of attorney executed by or on behalf of the Company; (v) the name and current annual salary of each salaried employee of the Company whose current annual salary is in excess of \$30,000 and the profit sharing, bonus or any other form of compensation (other than salary) paid or payable by the Company to or for the benefit of each such person for the year ending September 30, 2003, and any employment or other agreement of the Company with any of its officers or employees; (vi) the name of each of the officers and directors of the Company; and (vii) the name of each bank in which the Company has an account or safe-deposit box, the name in which the account or box is held and the names of all persons authorized to draw thereon or to have access thereto. The Company will provide LKQ prior to the Closing an accurate and complete copy of each such agreement, contract or commitment listed in Section 4.13 of the Disclosure Schedule. Except for any default that would not have a Material Adverse Effect, there has not been any default in any obligation to be performed by the Company under any such instrument.

4.14 Insurance . The Company carries insurance, which in the Company’s opinion is adequate in character and amount, with reputable insurers, covering, to the best knowledge and belief of the Shareholders and the Cruikshanks, all of its material and insurable assets, properties and business, and, to the best knowledge and belief of the Shareholders and the Cruikshanks, has provided all required performance and other surety bonds. To the best knowledge and belief of the Shareholders and the Cruikshanks, Section 4.14 of the Disclosure Schedule accurately and completely lists each policy of insurance in force with respect to the Company, its assets and properties, and each of the performance or other surety bonds maintained by the Company in the conduct of its business. All premiums and other payments which have become due under the policies of insurance listed in Section 4.14 of the Disclosure Schedule have been paid in full, all of such policies are now in full force and effect and, except as described in Section 4.14 of the Disclosure Schedule, to the best knowledge and belief of the Shareholders and the Cruikshanks, the Company has not received notice from any insurer, agent or broker of the cancellation of, or any increase in premium with respect to, any of such policies or bonds. To the best knowledge and belief of the Shareholders and the Cruikshanks, the Company has not received any notification from any insurer, agent or broker denying or disputing any claim made by any of them or denying or disputing any coverage for any such claim or the amount of any claim. Except as set forth in Section 4.14 of the Disclosure Schedule, the Company does not have any

claim against any of its insurers under any of such policies pending or anticipated, and, to the best knowledge and belief of the Shareholders and the Cruikshanks, there has been no occurrence of any kind which would give rise to any such claim. To the best knowledge and belief of the Shareholders and the Cruikshanks, Section 4.14 of the Disclosure Schedule sets forth the claims experience (including all open and closed claims) of the Company for the period from January 1, 2001 to the present, for workers' compensation claims, general liability claims, auto liability claims, products liability claims and any other claims covered by any insurance policy the Company has ever possessed.

4.15 Litigation . Except as set forth in Section 4.15 of the Disclosure Schedule, there are no actions, suits, claims, governmental investigations or arbitration proceedings pending or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened, against or affecting the Company or any of the assets or properties of the Company which could have a Material Adverse Effect and, to the best knowledge and belief of the Shareholders and the Cruikshanks, there is no basis for any of the foregoing. There are no outstanding orders, decrees or stipulations issued by any U.S. federal, state, or local judicial or administrative authority in any proceeding to which the Company is or was a party and which would have a Material Adverse Effect.

4.16 Records . The Company will furnish LKQ prior to the Closing with copies of the Company's articles of incorporation and all amendments thereto to date (certified by the appropriate officer of the state of the Company's incorporation) and of the Company's bylaws (certified by the Company's secretary), and such copies will be correct and complete in all respects. All of the operating data and records of the Company, including without limitation customer lists and financial, accounting and credit records (the "Records"), are accurate and complete in all material respects and there are no material matters as to which appropriate entries have not been made therein, except as described in Section 4.16 of the Disclosure Schedule. A record of all actions taken by the shareholders and the board of directors of the Company and all minutes of their meetings are contained in the minute books of the Company and are accurate and complete. The record books and stock ledgers of the Company contain an accurate and complete record of all issuances, transfers and cancellations of shares of capital stock of the Company.

4.17 No Material Adverse Change . Except as disclosed in Section 4.17 of the Disclosure Schedule, since September 30, 2003, (i) there have not been any changes in the business or properties of the Company, or in its financial condition, or in state or federal legislation applicable to the Company, other than changes occurring in the ordinary course of business which in the aggregate have not had a Material Adverse Effect, and (ii) there is not, to the best knowledge and belief of the Shareholders and the Cruikshanks, any threatened or prospective event or condition of any character whatsoever, including but not limited to proposed federal or state legislation applicable to the Company, which could have a Material Adverse Effect.

4.18 Absence of Certain Acts or Events . Except as disclosed in Section 4.18 of the Disclosure Schedule, since September 30, 2003, the Company has not: (i) authorized or issued any of its shares of capital stock (including any held in its treasury) or any other securities; (ii) declared or paid any dividend or made any other distribution of or with respect to its shares

of capital stock or other securities or purchased or redeemed any shares of its capital stock or other securities; (iii) paid any bonus or increased the rate of compensation of any of its employees other than in the ordinary course of business, consistent with prior practice; (iv) sold, leased, transferred or assigned any of its assets, other than in the ordinary course of business; (v) made or obligated itself to make capital expenditures aggregating more than \$25,000; (vi) incurred any material obligations or liabilities (including any indebtedness) or entered into any material transaction, except for this Agreement and the transactions contemplated hereby; or (vii) suffered any theft, damage, destruction or casualty loss in excess of \$25,000.

4.19 Compliance with Laws . Except as set forth in Section 4.19 of the Disclosure Schedule, the Company is in compliance with all laws, regulations and orders applicable to it, its assets, properties and business, except where the failure so to comply would not have a Material Adverse Effect. Except as described in Section 4.19 of the Disclosure Schedule, the Company has not received notification of any asserted past or present failure to comply with any laws, and, to the best knowledge and belief of the Shareholders and the Cruikshanks, no proceeding with respect to any such violation is contemplated. Neither the Company nor, to the best knowledge and belief of the Shareholders and the Cruikshanks, any employee of the Company, has made any payment of funds in connection with the business of the Company prohibited by law, and no funds have been set aside to be used in connection with its business for any payment prohibited by law.

4.20 Environmental Matters .

4.20.1 Definitions. For purposes of this Agreement, the terms listed below shall mean the following:

“Above Ground Tanks” shall mean that term as defined in 40 C.F.R. § 260.10.

“Environmental Laws” means U.S. federal, state, regional, county and local administrative rules, statutes, codes, ordinances, regulations, licenses, permits, approvals, plans, authorizations, directives, rulings, injunctions, decrees, orders, judgments, and any similar items, relating to the protection of human health, safety, or the environment including without limitation: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. §§ 9601 *et seq.*); (b) the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 *et seq.*); (c) The Hazardous Materials Transportation Control Act of 1970 (49 U.S.C. §§ 1802 *et seq.*); (d) the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Act Amendments (“RCRA”) (42 U.S.C. §§ 6901 *et seq.*); (e) the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. §§ 1251 *et seq.*) (the “Clean Water Act”); (f) the Safe Drinking Water Act (42 U.S.C. §§ 300h *et seq.*); (g) the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. §§ 1857 *et seq.*); (h) the Solid Waste Disposal Act, as amended by RCRA (42 U.S.C. § 6901 *et seq.*); (i) the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*); (j) the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”) (42 U.S.C. §§ 11001 *et seq.*); (k) the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”) (7 U.S.C. §§ 136 *et seq.*); (l) the National Environmental Policy Act of 1975 (42 U.S.C. §§ 4321 *et seq.*); (m) the Radon Gas and Indoor Air

Quality Reserve Act (42 U.S.C. §§ 7401 *et seq.*); (n) the National Environmental Policy Act of 1975 (42 U.S.C. §§ 4321 *et seq.*); (o) the Rivers and Harbors Act of 1899 (33 U.S.C. §§ 401 *et seq.*); (p) the Oil Pollution Act of 1990 (33 U.S.C. §§ 1321 *et seq.*); (q) the Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531 *et seq.*); (r) the Occupational Safety and Health Act of 1970, as amended, (29 U.S.C. §§ 651 *et seq.*); (s) North American Free Trade Act, (t) counterparts of any of the foregoing federal statutes enacted within the United States or by any U.S. state, region, county or local government (including any subdivisions thereof); (u) any and all laws, rules, regulations, codes, ordinances, licenses, permits, approvals, plans, authorizations, directives, rulings, injunctions, decrees, orders and judgments enacted or promulgated under any of the foregoing, all as amended and as may be amended in the future, and (v) common law theories of nuisance, trespass, waste, negligence, and abnormally dangerous activities arising out of or relating to the presence of Hazardous Substances in the environment or work place.

“Governmental Authority” means (i) any domestic government or political subdivision thereof whether domestic, national, state, county, municipal or regional or any other governmental entity; (ii) any agency or instrumentality of any such government, political subdivision or other government entity; (iii) any court, arbitral tribunal or arbitrator; and (iv) any non-governmental or quasi-governmental regulating body, to the extent that the rules, regulations or orders of such body have the force of law.

“Hazardous Substances” shall mean and be construed broadly to include any constituent, chemical, element, particle, compound, material, substance or waste which is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous substance,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “toxic substance,” or “special waste” under any Environmental Law and includes, but is not limited to, petroleum, petroleum by-products (including crude oil and any fraction thereof), waste oils, any hydrocarbon based substance, asbestos, asbestos-containing materials, urea formaldehyde and polychlorinated biphenyls.

“Permit” shall mean any approval, covenant, waiver, exception, order, permit, authorization, site-specific limitation, or license of any Governmental Authority relating to any Environmental Law or the use of land or any Company operations.

“Release” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the indoor or outdoor environment, including without limitation the abandonment or discarding of barrels, drums, containers, tanks and other receptacles containing or previously containing any hazardous substance.

“Underground Storage Tanks” shall have the meaning given it in the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 *et seq.*).

4.20.2. Except as described in Section 4.20.2 of the Disclosure Schedule, (i) the Company has not transported, stored, treated or disposed, nor has it allowed or arranged for any third parties to transport, store, treat or dispose of Hazardous Substances or other

waste to or at any location or in a manner that has resulted or could result in a liability under any Environmental Law, (ii) the Company has not performed, arranged for or allowed by any method or procedure such transportation, storage, treatment or disposal in contravention of any Environmental Law, and (iii) the Company has not disposed, or allowed or arranged for any third parties to dispose, of Hazardous Substances or other waste upon property owned or leased by it.

4.20.3 There has not occurred, nor is there presently occurring, a Release or threatened Release of any Hazardous Substance on, into or beneath the surface of, any parcel of the Real Estate or the Leasehold Premises, or to the best knowledge and belief of the Shareholders and the Cruikshanks, on property adjacent thereto.

4.20.4 The Company has not transported or disposed, nor has it allowed or arranged for any third parties to transport or dispose, of any Hazardous Substance or other waste to or at a site which, pursuant to CERCLA or any similar state law, (i) has been placed on the National Priorities List or its state equivalent, or (ii) the Environmental Protection Agency or the relevant state agency has proposed or is proposing to place on the National Priorities List or its state equivalent. The Company has not received any notice, and the Company has no knowledge of any facts which could give rise to any notice, that the Company is a potentially responsible party for a U.S. federal or state environmental response action or corrective action under CERCLA, RCRA or under any other Environmental Law. The Company has not submitted nor was it required to submit any notice pursuant to Section 103(c) of CERCLA with respect to the Real Estate or the Leasehold Premises. The Company has not received any request for information in connection with any environmental response under any Environmental Law. The Company has not undertaken (or been requested to undertake) any environmental response action at the request of any U.S. federal, state or local governmental entity, or at the request of any other person or entity, at any Real Estate or the Leasehold Premises.

4.20.5 Except as set forth in Section 4.20.5 of the Disclosure Schedule, the Company does not use, nor has it ever used, any Underground Storage Tanks or Above Ground Tanks, and there are not now nor, to the best knowledge and belief of the Shareholders and the Cruikshanks, have there ever been Underground Storage Tanks or Above Ground Tanks on the Real Estate or the Leasehold Premises. There has been no Release from or rupture of any Underground Storage Tanks or Above Ground Tanks on the Real Estate or the Leasehold Premises during the periods of the Company's uses thereof.

4.20.6 There are no asbestos-containing materials in or on any of the Affiliated Properties (as defined in Section 7.7) or, to the best knowledge and belief of the Shareholders and the Cruikshanks, in or on any of the Leasehold Premises except as indicated in that certain Phase I Environmental Site Assessment Update prepared by CTL Engineering, Inc. and dated February 10, 2004.

4.20.7 Except as described in Section 4.20.7 of the Disclosure Schedule, the Company is in compliance with all Environmental Laws governing the Real Estate and

the Leasehold Premises and the operations of the Company. The Company has obtained and maintained in effect all approvals and permits necessary under the Environmental Laws for operation of its business; no action to revoke or modify such approvals or permits is pending; and the Company is in compliance with such approvals and permits. There are no laws, regulations, ordinances, licenses, permits or orders relating to environmental or worker safety matters requiring any work, remediation, corrective actions, repairs, construction or capital expenditures with respect to the assets or properties of the Company.

4.20.8 There are no failures to comply with any Environmental Laws at any of the Real Estate or the Leasehold Premises which pose a risk to the environment or the health or safety of any persons. The Company has never engaged in any activities relating to manufacturing, remanufacturing, or refurbishing of any automotive parts at any of the Real Estate or the Leasehold Premises, except bumper refurbishing activities at 2040 S. Hamilton Road in Columbus, Ohio.

4.20.9 The Company will provide LKQ prior to the Closing with true, accurate and complete information pertaining to the environmental history of the assets of the Company and the Real Estate and the Leasehold Premises. Section 4.20.9 of the Disclosure Schedule identifies (i) all environmental audits, assessments or occupational health studies relating to the assets, Real Estate and Leasehold Premises, properties or business of the Company undertaken by a Governmental Authority or the Company or any of their agents; (ii) the results of any groundwater, soil, air or asbestos monitoring undertaken with respect to the Real Estate or the Leasehold Premises; (iii) all written communications, including without limitation warning notices, notices of violation, requests for information, complaints, demands, judgments, orders, consent orders or decrees between the Company and any U.S. federal, state or local environmental agencies or any person or entity within the applicable statutory limitations period; and (iv) all citations, penalties, orders, judgments, and decrees issued to the Company within the past ten years under the Occupational Safety and Health Act (29 U.S.C. Sections 651 *et seq.*); provided, that any disclosure pursuant to this Section 4.20.9 in the Disclosure Schedule shall not limit or otherwise affect the representations and warranties set forth elsewhere in Section 4.20 or other Sections of this Agreement.

4.21 Labor Relations . Except as set forth in Section 4.21 of the Disclosure Schedule, the Company is not a party to or bound by any collective bargaining agreement or any other agreement with a labor union, and to the best knowledge and belief of the Shareholders and the Cruikshanks, there has been no effort by any labor union to organize any employees of the Company into one or more collective bargaining units. There is not pending or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened any labor dispute, strike or work stoppage which affects or which may affect the business of the Company or which may interfere with its continued operation. To the best knowledge and belief of the Shareholders and the Cruikshanks, and subject to the information provided in Section 4.21 of the Disclosure Schedule, neither the Company nor any agent, representative or employee of the Company has committed any unfair labor practice as defined in the National Labor Relations Act, as amended. There is not now pending or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened any charge or complaint against the Company by or with the National

Labor Relations Board or any representative thereof. There has been no strike, walkout or work stoppage involving any of the employees of the Company during the five-year period prior to the date hereof. Other than Robert Cruikshank, the Company is not aware that any executive or key employee or group of employees has any plans to terminate his, her or their employment with the Company.

4.22 Employee Benefits .

4.22.1 None of the Company, nor any corporation or business which is now or at the relevant time was a member of a controlled group of corporations or trades or businesses including the Company, within the meaning of Section 414 of the Code, maintains or contributes to, or at any time since January 1, 1993 maintained or contributed to: (i) any non-qualified deferred compensation or retirement plans or arrangements; (ii) any qualified defined contribution retirement plans or arrangements; (iii) any qualified defined benefit pension plan; (iv) any other plan, program, agreement or arrangement under which former employees of the Company or their beneficiaries are entitled, or current employees of the Company will be entitled following termination of employment, to medical, health, life insurance or other benefits other than pursuant to benefit continuation rights granted by state or U.S. federal law; or (v) any other employee benefit, health, welfare, medical, disability, life insurance, stock, stock purchase or stock option plan, program, agreement, arrangement or policy, except in each case as described in Section 4.22 of the Disclosure Schedule. The plans described in Section 4.22 of the Disclosure Schedule are referred to herein as the "Plans."

4.22.2 To the best knowledge and belief of the Shareholders and the Cruikshanks, the administration of the Plans complies in all respects with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Plans meet any applicable requirements for favorable tax treatment under the Code in both form and operation. To the best knowledge and belief of the Shareholders and the Cruikshanks, all of the Plans which constitute employee pension benefit plans or employee welfare plans subject to ERISA and the trusts or other funding vehicles related to the Plans have been maintained in compliance in both form and operation with the requirements of ERISA including, but not limited to, the preparation and filing of all required reports with respect to the Plans, the submission of such reports to the appropriate governmental authorities, the timely preparation and distribution of all required employee communications (including without limitation any notice of plan amendment which is required prior to the effectiveness of such amendments), the proper and timely purchase and maintenance of required surety bonds and the proper and timely disposition of all benefit claims. The costs of administering the Plans, including fees for the trustee and other service providers which are customarily paid by the Company, have been paid or will be paid prior to the Closing Date or are reflected in the 2004 Balance Sheet. To the best knowledge and belief of the Shareholders and the Cruikshanks, there have been no prohibited transactions as defined in Section 406 of ERISA or Section 4975 of the Code with respect to any of the Plans or any parties in interest or disqualified persons with respect to the Plans or any reduction or curtailment of accrued benefits with respect to any of the Plans. There are no pending or, to the best knowledge and belief of the Shareholders and the Cruikshanks, threatened claims, lawsuits, or arbitrations which

have been asserted or instituted against the Plans, any fiduciaries thereof with respect to their duties to the Plans or the assets of any of the trusts under any of the Plans.

4.22.3 All required contributions for all Plan years ending prior to the Closing Date have been made and adequate accruals for contributions with respect to all current Plan years are reflected in the 2004 Balance Sheet. The cost of providing all retirement and post-termination benefits has been properly accrued and is reflected in the 2004 Balance Sheet in accordance with GAAP, including Statements of Financial Accounting Standards 87, 106 and 112. The net fair market value of all assets of each Plan exceeds the actuarial present value of the accumulated benefits under such Plan, both vested and non-vested, as determined on the basis of the actuarial methods and assumptions used for purposes of the most recent actuarial report for such Plan. If any of the Plans is a multi-employer plan as defined in Section 3(37) of ERISA, the Company would not be liable for any withdrawal liability under Subtitle E of Title IV of ERISA if a complete withdrawal occurred immediately prior to the Closing Date. The Company has no plans, programs, agreements or arrangements, and has not made any other commitments to its employees, former employees or their beneficiaries, under which it has any obligation to provide any retiree or other employee benefit payments which are not adequately funded through a trust or other funding arrangement.

4.22.4 The Company will furnish LKQ prior to the Closing with true and complete copies of: (i) the Plans and any related trusts or funding vehicles, policies or contracts and the related summary plan descriptions with respect to each Plan; (ii) the most recent determination letters received from the Internal Revenue Service regarding the Plans and copies of any pending applications, filings or notices with respect to any of the Plans with the Internal Revenue Service, the Pension Benefit Guaranty Corporation, the Department of Labor or any other governmental agency; (iii) the latest financial statements and annual reports for each of the Plans and related trusts or funding vehicles, policies or contracts as of the end of the most recent plan year with respect to which the filing date for such information has passed; (iv) the reports of the most recent actuarial valuations of the Plans; (v) copies of all corporate resolutions or other documents pertaining to the adoption of the Plans or any amendments thereto or to the appointment of any fiduciaries thereunder and copies of any investment management agreement thereunder and of any fiduciary insurance policies, surety bonds, rules, regulations or policies of the trustees or of any committee thereunder; and (vi) copies of any communications or notices provided to employees or plan participants with respect to the Plans along with information concerning the date and extent of distribution of such communications.

4.23 Warranties . No product manufactured, sold, leased, or delivered by the Company, or work performed by it, is subject to any guaranty, warranty, or other indemnity, except as described in Section 4.23 of the Disclosure Schedule. Each product manufactured, sold, leased, or delivered by the Company, and all work performed by it, has been in conformity with all applicable contractual commitments and all express and implied warranties, and is free from defects. No product manufactured, sold, leased, or delivered by the Company shall be returned for refund except to the extent of an allowance for returns of an amount equal to 2.5% of the total sales of the Company over the 90 day period ending on the Closing Date.

4.24 Product Liability . The Company has no liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against it giving rise to any liability) arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by it, or as a result of any work performed by it.

4.25 Accuracy of Information . No representation, statement or information made or furnished by the Company, the Shareholders, or the Cruikshanks in this Agreement or the Disclosure Schedule contains or shall contain any untrue statement of a material fact or omits or shall omit any material fact necessary to make the information contained therein not misleading.

4.26 Investment Bankers' and Brokers' Fees . The Company does not have any obligation to pay any fees or commissions to any investment banker, broker, finder or agent with respect to the transactions contemplated by this Agreement.

4.27 Binding Obligation . This Agreement has been duly executed and delivered by the Shareholders and the Cruikshanks and is a valid and binding obligation of the Shareholders and the Cruikshanks, enforceable in accordance with its terms. Each of the Shareholder's trust has been duly formed under the laws of the state of its formation. Neither the execution and delivery of this Agreement by the Shareholders and the Cruikshanks nor the consummation by them of the transactions and performance by them of the agreements contemplated hereby will: (i) conflict with or violate any provision of the articles of incorporation or bylaws of the Company, or of any law, ordinance or regulation or any decree or order of any court or administrative or other governmental body which is either applicable to, binding upon or enforceable against the Shareholders, the Cruikshanks or the Company or the assets or properties of the Company; or (ii) except as described in Section 4.27 of the Disclosure Schedule, result in any breach of or default under or create in any party the right to accelerate, terminate, modify or cancel, any mortgage, contract, indenture, will, trust or other instrument which is either binding upon or enforceable against the Shareholders, the Cruikshanks or the Company or the assets or properties of the Company. No permit, consent, approval or authorization of, or declaration to or filing by the Shareholders, the Cruikshanks or the Company with, any regulatory or other government authority is required in connection with the execution and delivery of this Agreement by the Shareholders and the Cruikshanks and the consummation by the Shareholders and the Cruikshanks of the transactions and performance by them of the agreements contemplated hereby.

4.28 Status of the Shares . The Shareholders are the lawful owners of all of the shares of the common stock of the Company, and the Shareholders have valid marketable title thereto, free and clear of all liens, pledges, encumbrances, restrictions on transfer, claims and equities of every kind. Except for this Agreement, there are no outstanding warrants, options or rights of any kind to acquire from the Shareholders any of the shares of the Company's common stock held by the Shareholders.

4.29 Private Offering.

4.29.1 Each of the Shareholders is aware and understands that (i) LKQ is relying upon such Shareholder's representations, warranties, and agreements contained in this Agreement in determining the applicability of certain laws and regulations to the transactions contemplated hereby, (ii) there are substantial risks incident to an investment in the LKQ Common Stock, an investment in the LKQ Common Stock is inherently speculative in nature, and such Shareholder may suffer a complete loss of such Shareholder's investment, (iii) no federal or state agency has passed upon the LKQ Common Stock or made any finding or determination as to the fairness of this investment, the merits of the terms of the offer and the sale of the LKQ Common Stock, or the adequacy or accuracy of LKQ's disclosures to such Shareholder, (iv) such Shareholder must bear the economic risk of such Shareholder's investment in the LKQ Common Stock for an indefinite period of time because the shares of LKQ Common Stock have not been and will not be registered as part of this transaction under the Securities Act of 1933, as amended (the "Act"), or any state securities law and, therefore, cannot be sold or transferred unless either they are subsequently registered or an exemption from such registration is available, (v) investment in the LKQ Common Stock is suitable only for persons who have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in this investment, and (vi) the shares of LKQ Common Stock comprising the Stock Consideration are and will be "restricted securities," as said term is defined in Rule 144 promulgated under the Act, and the stock certificate representing the LKQ Common Stock will include an appropriate restrictive legend.

4.29.2 The shares of LKQ Common Stock are being acquired for each of the Shareholder's own account, for investment purposes only, and not with any view toward the resale or distribution thereof, or with any present intention of selling or distributing any of such shares, and no one other than each Shareholder has any beneficial interest in such shares.

4.29.3 Each of the Shareholders is an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Act.

4.29.4 Each of the Shareholders has received and carefully reviewed all materials (including LKQ's Prospectus dated October 2, 2003 and LKQ's quarterly report on Form 10-Q for the quarterly period ended September 30, 2003) that such Shareholder considers relevant to evaluate the risks and merits of an investment in the LKQ Common Stock and has had a full opportunity to ask questions of and receive answers from LKQ or its officers concerning the terms and conditions of an investment in the LKQ Common Stock and to verify the accuracy of any representation or information set forth herein, and all such questions, if any, have been answered to the full satisfaction of the Shareholders, and they acknowledge that, in deciding to acquire LKQ Common Stock, they have not relied on any oral representation by or on behalf of LKQ or on any projections of future performance of LKQ.

4.29.5 The Shareholders agree that they will not sell or otherwise dispose of any of the LKQ Common Stock unless such sale or other disposition (i) has been registered under the Act or, in the opinion of Shareholders' counsel acceptable to LKQ, is exempt from registration under the Act, and (ii) has been registered or qualified or, in the opinion of such counsel, is exempt from registration or qualification under applicable state securities laws.

5. Representations and Warranties of LKQ

In order to induce the Shareholders and the Cruikshanks to enter into this Agreement and to consummate the transactions contemplated hereunder, LKQ makes the following representations and warranties:

5.1 Organization, Power and Authority of LKQ . LKQ is a corporation duly organized and validly existing under the laws of the State of Delaware. LKQ has full corporate power and authority to enter into this Agreement and to carry out the transactions and agreements contemplated hereby.

5.2 Capital Stock of LKQ . The authorized capital stock of LKQ consists solely of 500,000,000 shares of common stock, of which 19,582,242 shares are issued and outstanding as of the Closing Date. All voting rights in LKQ are vested exclusively in its shares of common stock, and there are no voting trusts, proxies or other agreements or understandings of which LKQ is aware with respect to the voting of the capital stock of LKQ. All of the issued and outstanding shares of common stock of LKQ are validly authorized and issued, fully paid and non-assessable. As of the Closing Date, except for (i) 4,457,795 shares reserved for issuance upon exercise of outstanding options granted under LKQ's 1998 Equity Incentive Plan, (ii) 175,000 shares reserved for issuance upon exercise of options granted to LKQ's Chief Executive Officer, (iii) 180,000 shares reserved upon exercise of outstanding options granted under LKQ's Stock Option and Compensation Plan for Non-Employee Directors, and (iv) 1,751,293 shares reserved for issuance upon the exercise of warrants, there are no outstanding warrants, options or rights of any kind to acquire from LKQ any shares of its common stock or securities of any kind, and there are no preemptive rights with respect to the issuance or sale of shares of capital stock of LKQ. Except as disclosed in LKQ's audited financial statements, LKQ has no obligation to acquire any of its issued and outstanding shares of common stock or any other security issued by it from any holder thereof.

5.3 Financial Statements . LKQ has previously delivered to the Shareholders a copy of LKQ's audited financial statements for the year ending December 31, 2002 and LKQ's unaudited financial statements for the quarter ended September 30, 2003, each of which present fairly the financial position of LKQ at such date. The December 31, 2002 Balance Sheet included in such financial statements is referred to herein as the "LKQ Balance Sheet."

5.4 Liabilities . LKQ and its Consolidated Subsidiaries have no material liabilities or obligations, either accrued, absolute, contingent or otherwise, except: (i) to the extent reflected or taken into account in determining net worth in the LKQ Balance Sheet and not heretofore paid or discharged; (ii) to the extent disclosed in Section 5.4 of the Disclosure Schedule; and (iii) normal liabilities incurred in the ordinary course of business, consistent with prior practice, since the date of the LKQ Balance Sheet.

5.5 Litigation . There are no actions, suits, claims, governmental investigations or arbitration proceedings pending or, to the best of LKQ's knowledge, threatened against or affecting LKQ or any of the Consolidated Subsidiaries or any of their assets or properties which

could have a Material Adverse Effect and, to the best of LKQ's knowledge, there is no basis for any of the foregoing. There are no outstanding orders, decrees or stipulations issued by any federal, state, or local judicial or administrative authority in any proceeding to which LKQ or any of the Consolidated Subsidiaries is or was a party and which would have a Material Adverse Effect.

5.6 No Material Adverse Change . Since the date of the LKQ Balance Sheet, there have not been any changes in the business or properties of LKQ or any of the Consolidated Subsidiaries, or in its consolidated financial condition, other than changes occurring in the ordinary course of business that in the aggregate have not had a Material Adverse Effect.

5.7 Compliance with Laws . LKQ and the Consolidated Subsidiaries are in compliance with all laws, regulations and orders applicable to them or their assets, properties and business, except where the failure so to comply would not have a Material Adverse Effect. Neither LKQ nor any of the Consolidated Subsidiaries has received notification of any asserted past or present failure to comply with any laws, and, to the best of LKQ's knowledge, no proceeding with respect to any such violation is contemplated, except in each case where such violation or failure so to comply would not have a Material Adverse Effect. Neither LKQ nor any of its Consolidated Subsidiaries, nor, to the best of LKQ's knowledge, any employees of any of them has made any payment of funds in connection with their business prohibited by law, and no funds have been set aside to be used in connection with their business for any payment prohibited by law.

5.8 Due Authorization; Binding Obligation; Noncontravention . The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of LKQ. This Agreement has been duly executed and delivered by LKQ and is a valid and binding obligation of LKQ, enforceable in accordance with its terms. Neither the execution and delivery of this Agreement by LKQ nor the consummation of the transactions contemplated hereby will: (i) conflict with or violate any provision of the certificate of incorporation or bylaws of LKQ or of any decree or order of any court or administrative or other governmental body which is either applicable to, binding upon or enforceable against it; or (ii) result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under, any mortgage, contract, agreement, indenture or other instrument which is either binding upon or enforceable against it. No permit, consent, approval or authorization of, or declaration to or filing with, any regulatory or other governmental authority is required in connection with the execution and delivery of this Agreement by LKQ or the consummation of the transactions contemplated hereby.

5.9 Accuracy of Information . No representation, statement or information made or furnished by LKQ in this Agreement or the Disclosure Schedule contains or shall contain any untrue statement of a material fact or omits or shall omit any material fact necessary to make the information contained therein not misleading.

5.10 Investment Bankers' and Brokers' Fees . LKQ has no obligation to pay any fees or commissions to any investment banker, broker, finder or agent with respect to the transactions contemplated by this Agreement.

6. Other Agreements

6.1 Personal Effects . At any time on, before or after the Closing Date, LKQ acknowledges and agrees that Robert H. Cruikshank shall be entitled to remove from any and all premises occupied by the Company the items of personal property which are owned by him personally as described in Section 6.1 of the Disclosure Schedule.

6.2 Code Section 338. LKQ and the Shareholders agree that no election under Code Section 338 shall be made with respect to the transactions contemplated by this Agreement.

6.3 Release of Guarantees. Within ninety (90) days after the Closing Date, the Shareholders shall cause Columbus Countywide Development (“CCD”) to release the Company from its guarantee of the obligation of the Shareholders to repay the loan dated September 10, 1991 for the purchase of property located at 2660 Winchester Pike, Columbus, Ohio that is currently owned by Winchester Properties, LLC. The Shareholders acknowledge that, as of January 28, 2004, the outstanding loan balance owed to CCD was \$133,738.45. LKQ shall withhold \$133,738.45 from the Cash Consideration as a non-interest bearing escrow to secure the Shareholders’ obligations under this paragraph. Upon receipt of the release of the Company’s obligations executed by CCD, LKQ shall, within three business days, pay \$133,738.45 (the portion of the Cash Consideration held in a non-interest bearing escrow by LKQ) to the Shareholders.

Within ninety (90) days after the Closing Date, the Shareholders shall cause Scope Leasing, Inc. (“Scope”) to release the Company from its guarantee of the obligation of Aeromax, Inc. with respect to the lease by Aeromax, Inc. of a Merlin IIIA aircraft. The Shareholders acknowledge that, as of January 6, 2004, the outstanding loan balance owed to Scope was \$419,880.12. LKQ shall withhold \$419,880.12 from the Cash Consideration as a non-interest bearing escrow to secure the Shareholders’ obligations under this paragraph. Upon receipt of the release of the Company’s obligations executed by Scope, LKQ shall, within three business days, pay \$419,880.12 (the portion of the Cash Consideration held in a non-interest bearing escrow by LKQ) to the Shareholders.

6.4 No Knowledge of Breach by Shareholders and the Cruikshanks. Excluding matters disclosed in this Agreement, the Disclosure Schedule, or any other agreement executed by the parties hereto simultaneous herewith, to the knowledge of LKQ, LKQ is not aware of any facts or circumstances that would serve as the basis for a claim by LKQ against the Shareholders and the Cruikshanks based upon a breach of any of the representations and warranties of the Shareholders and the Cruikshanks contained in this Agreement.

7. Conditions to the Obligation of LKQ

The obligation of LKQ to purchase the Shares shall be subject to the fulfillment (or waiver by LKQ) at or prior to the Closing Date of each of the following conditions:

7.1 Opinion of Counsel . LKQ shall have received an opinion dated the Closing Date from Carlile Patchen & Murphy LLP, counsel for the Shareholders, the Cruikshanks and the Company, satisfactory to LKQ in form and substance concerning the matters set forth in Exhibit A.

7.2 Receipt of Necessary Consents . All necessary consents or approvals of third parties to any of the transactions contemplated hereby shall have been obtained.

7.3 No Restraint . No court or governmental regulatory authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) or taken any action which prohibits the consummation of the transactions contemplated by this Agreement, and each party agrees to use all reasonable efforts to remove any such prohibition on the consummation of the transactions contemplated by this Agreement.

7.4 No Adverse Litigation . There shall not be pending or threatened any action or proceeding by or before any court or other governmental body which shall seek to restrain, prohibit or invalidate the sale of the Shares to LKQ or any other transaction contemplated hereby, and which, in LKQ's judgment, makes it inadvisable to proceed with the purchase of the Shares.

7.5 Releases . To the extent requested by LKQ, each of the Company's directors and officers shall have delivered to the Company and LKQ a resignation and a release and waiver of any claim that he or she may have against the Company, except for any claims arising under this Agreement or under any other document or agreement executed and delivered in connection with the transactions contemplated by this Agreement or under the Company's existing employment agreement with Michael L. Rogers.

7.6 Due Diligence . LKQ shall have completed its due diligence investigation of the Company, and the results of such investigation shall not have revealed any circumstance, event or occurrence which had or reasonably could be expected to have a Material Adverse Effect on the Company.

7.7 Leases. The Shareholders shall have caused the owners of the properties currently occupied by the Company and located at 2040 S. Hamilton Road, Columbus, Ohio, 2690 Winchester Pike, Columbus, Ohio, and 655 Columbus Street, Lancaster, Ohio (collectively, the "Affiliated Properties") to enter into lease agreements (the "Lease Agreements") with the Company with respect to such Affiliated Properties in form and substance substantially as set forth in Exhibits B-1 and B-2, respectively.

7.8 Good Standing Certificate . The Shareholders shall have delivered to LKQ a Certificate from the appropriate governmental agency evidencing that the Company is in good standing under the laws of its jurisdiction of incorporation and in each jurisdiction in which it is qualified as a foreign corporation.

7.9 Consulting Agreement. Robert H. Cruikshank shall have entered into a consulting agreement, in form and substance substantially as set forth in Exhibit C, with the

Company, and each of the Cruikshanks shall have terminated their existing employment agreements with the Company.

8. Conditions to Obligation of the Shareholders

The obligation of the Shareholders to sell the Shares shall be subject to the fulfillment (or waiver by the Shareholders) at or prior to the Closing Date of each of the following conditions:

8.1 Receipt of Necessary Consents . All necessary consents or approvals of third parties to any of the transactions contemplated hereby shall have been obtained.

8.2 No Restraint . No court or governmental or regulatory authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) or taken any action which prohibits the consummation of the transactions contemplated by this Agreement, and each party agrees to use all reasonable efforts to remove any such prohibition on the consummation of the transactions contemplated by this Agreement.

8.3 No Adverse Litigation . There shall not be pending or threatened any action or proceeding by or before any court or other governmental body which shall seek to restrain, prohibit or invalidate the sale of the Shares to LKQ or any other transaction contemplated hereby, and which in the Shareholders' judgment, makes it inadvisable to proceed with the sale of the Shares to LKQ.

8.4 Corporate Action . LKQ shall have taken all corporate action necessary to effect the purchase of the Shares, and shall have furnished the Shareholders with certified copies of resolutions duly adopted by its board of directors (or a committee thereof), in form and substance satisfactory to counsel for the Shareholders, in connection with the foregoing.

8.5 Leases. The Company shall have entered into lease agreements with respect to the Affiliated Properties, in form and substance substantially as set forth in Exhibit B.

8.6 Consulting Agreement. The Company shall have entered into a consulting agreement, in form and substance substantially as set forth in Exhibit C, with Robert H. Cruikshank.

9. Indemnification

9.1 Indemnification by the Shareholders and the Cruikshanks . Subject to the terms and conditions of this Section, the Shareholders and the Cruikshanks hereby jointly and severally agree, from and after the Closing Date, to indemnify, defend and hold harmless LKQ and its affiliates from, against, for, and in respect of any and all expenses, losses, costs, deficiencies, liabilities and damages (including related counsel fees and expenses) (collectively, "Damages") incurred or suffered by them by reason of, resulting from, based upon or arising out of (i) any inaccuracy or untruth of any representation or warranty of the Shareholders or the Cruikshanks contained in or made pursuant to this Agreement or in any certificate, Schedule or Exhibit furnished by the Shareholders or the Cruikshanks in connection herewith, (ii) any default in the performance of any of the covenants or agreements made by the Shareholders or the

Cruikshanks in this Agreement, (iii) any claim relating to any Environmental Law and based upon the actions of the Company, the Shareholders, or the Cruikshanks prior to the Closing Date, including such actions of the Company, the Shareholders, or the Cruikshanks disclosed in Sections 4.20.3 through 4.20.9 of the Disclosure Schedule, or (iv) any claim relating to the Company's obligations to lease the automobiles used by the Cruikshanks. The right of LKQ to be indemnified from and after the Closing Date shall be subject to each of the following principles or qualifications and any other principles and qualifications set forth in any other agreement executed by the parties hereto simultaneous herewith:

9.1.1 Intentionally omitted.

9.1.2 Except as otherwise provided in Section 9.1.3, each of the representations and warranties made by the Shareholders or the Cruikshanks in this Agreement or pursuant hereto shall survive until the second anniversary of the Closing Date. No claim for the recovery of Damages based upon the inaccuracy or untruth of such representations and warranties may be asserted after such representations and warranties shall be thus extinguished pursuant to this Section 9.1.2 or Section 9.1.3; *provided, however*, that claims first asserted in writing within the applicable period (whether or not the amount of any such claim has become ascertainable within such period) may thereafter be pursued if and to the extent that a lawsuit asserting such claim is filed prior to or within 180 days after the last day of such applicable period.

9.1.3 Notwithstanding the foregoing provisions of Section 9.1.2, (i) the representations and warranties in Sections 4.1, 4.2, 4.27 and 4.28 shall survive forever, subject to applicable statutes of limitation, (ii) the representations and warranties made in Section 4.6 shall in each case survive until the first anniversary of the later of (A) the date on which the applicable period of limitation on assessment or refund of tax has expired, or (B) the date on which the applicable tax year (or portion thereof) has been closed, and (iii) the representations and warranties made in Sections 4.19 and 4.20 shall survive until the sixtieth day following the expiration of the applicable statute of limitations.

9.1.4 Such indemnification obligation of the Shareholders and the Cruikshanks shall be secured by the right, but not the obligation, of LKQ to set-off against the Stock Consideration. Until the second anniversary of the Closing, the stock certificates representing the Stock Consideration shall be held in escrow by LKQ. If the Shareholders elect to sell any or all of the Stock Consideration prior to the second anniversary of the Closing, all proceeds from such sale shall be delivered to and held in escrow by LKQ until the second anniversary of the Closing, at which time LKQ shall pay to the Shareholders interest on any such proceeds from the date of receipt equal to three percent (3%) per annum. Upon notice to the Shareholders or the Cruikshanks specifying in reasonable detail the basis for such set-off, LKQ may set-off any amount to which it may be entitled under this Section 9.1 against the Stock Consideration. Any shares of LKQ Common Stock obtained by LKQ from the Shareholders to satisfy any indemnification obligation hereunder shall be valued at the average of the closing prices of the LKQ Common Stock (as published in *The Wall Street Journal*) on the five

business days immediately preceding the day such shares are transferred to LKQ. Except to the extent it is exercised, such right of set-off shall not limit or otherwise affect the obligation of the Shareholders or the Cruikshanks to satisfy any indemnification obligation under this Section 9.1 directly. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit LKQ in any manner in the enforcement of any other remedies that may be available to it. Any and all LKQ Common Stock, cash and accrued interest which continues to be held in escrow by LKQ on the second anniversary of the Closing shall be returned by LKQ to the Shareholders within 10 days after such second anniversary.

9.2 Indemnification by LKQ . Subject to the terms and conditions of this Section, LKQ does hereby agree, from and after the Closing Date, to indemnify, defend, and hold harmless the Shareholders and the Cruikshanks from, against, for, and in respect of any and all Damages incurred or suffered by the Shareholders or the Cruikshanks by reason of, resulting from, based upon, or arising out of: (i) any inaccuracy, untruth, or incompleteness of any representation or warranty of LKQ contained in or made pursuant to this Agreement or in any certificate, Schedule or Exhibit furnished by LKQ in connection herewith; (ii) any breach or partial breach of any covenant or agreement of LKQ made in this Agreement, or (iii) any claim relating to any Environmental Law and based upon the actions of LKQ or the Company after the Closing Date. The right of the Shareholders and the Cruikshanks to be indemnified from and after the Closing Date shall be subject to each of the following principles or qualifications and any other principles and qualifications set forth in any other agreement executed by the parties hereto simultaneous herewith:

9.2.1 Intentionally omitted.

9.2.2 Each of the representations and warranties made by LKQ in this Agreement or pursuant hereto shall survive until the second anniversary of the Closing Date except that the representations and warranties made in Sections 5.1, 5.2 and 5.8 shall survive forever, subject to applicable statutes of limitation. No claim for the recovery of Damages based upon the inaccuracy of such representations and warranties may be asserted after such representations and warranties shall be thus extinguished pursuant to this Section 9.2.2; *provided, however* , that claims first asserted in writing within the applicable period (whether or not the amount of any such claim has become ascertainable within such period) shall not thereafter be barred.

10. Certain Additional Agreements

10.1 Restrictive Covenants.

10.1.1 In order to assure that LKQ will realize the value and goodwill inherent in the Company, each of the Shareholders and the Cruikshanks agrees with LKQ that he shall not, and

none of his affiliates shall, directly or indirectly, either for himself or for any other person for a period of the greater of (a) five years following the Closing Date, or (b) two years following the termination of any consulting or employment relationship between such Cruikshank and the Company and/or its affiliates: (i) engage in, represent, furnish consulting services to, be employed by or have any interest in (whether as owner, principal, director, officer, partner, agent, consultant, shareholder, member or otherwise) any automotive aftermarket or remanufactured parts sales or distribution business conducted by Company anywhere within a one hundred (100) mile radius of a location where the Company distributed such parts during the twelve months preceding the date hereof; *provided, however*, that the Shareholders or the Cruikshanks may acquire and hold an aggregate of up to two percent of the outstanding shares of any corporation engaged in any such business if such shares are publicly traded in an established securities market; (ii) induce any customer of LKQ or its subsidiaries to patronize any such competitive business or otherwise request or advise any such customer to withdraw, curtail or cancel any of its business with LKQ or its subsidiaries; or (iii) solicit for employment, or assist any other person in soliciting for employment, any person employed by any of LKQ or its subsidiaries.

10.1.2 If any provision of this Section 10.1, as applied to any party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other provision or any other part of this Agreement, the application of such provision in any other circumstances or the validity or enforceability of this Agreement. If any such provision, or any part thereof, is held to be unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision, and/or to delete specific words or phrases, and in its reduced form such provision shall then be enforceable. Upon breach of any provision of this Section 10.1, LKQ shall be entitled to injunctive relief, since the remedy at law would be inadequate and insufficient. In addition, LKQ shall be entitled to such Damages as it can show it has sustained by reason of such breach.

10.2 Tax Matters. To the extent reasonably requested by LKQ, the Shareholders shall cooperate with LKQ with respect to the preparation and filing of the 2003 and 2004 U.S. federal and state corporation tax returns of the Company, with respect to all periods prior to the Closing Date.

10.3 Share Restrictions. Commencing at the Closing and at any time thereafter during which the Shareholders own any LKQ Common Stock, they shall not (x) directly or indirectly sell any equity security of LKQ if he does not own the security sold, or if owning the security, does not deliver it against such sale within 20 days thereafter, or (y) establish a derivative position with respect to any equity security of LKQ that increases in value as the value of the underlying equity decreases (including but not limited to a long put option and a short call option position) with securities underlying the position exceeding the underlying securities otherwise owned by him.

10.4 Stock Consideration Minimum Price. With respect to the number of shares constituting the Stock Consideration that are owned by the Shareholders on the first anniversary of the Closing, LKQ will make an additional payment per share to the Shareholders (in cash or additional shares of LKQ Common Stock) equal to (i) \$16.00 (as adjusted appropriately for any stock split or similar transaction involving LKQ Common Stock occurring after the date hereof), minus (ii) the average of the closing prices of LKQ Common Stock (as published in *The Wall Street Journal*) on the five business days immediately preceding the first anniversary of the Closing.

10.5 Registration Rights. The Company hereby grants to the Shareholders all rights (subject to corresponding obligations) under Section 3 of LKQ's Registration Rights Agreement dated as of June 19, 1998 (which is Exhibit 10.4 to LKQ's registration statement on Form S-1 on file with the Securities and Exchange Commission) as if each of the Shareholders is a "Stockholder" (as defined in the Registration Rights Agreement), provided however, that the definition of "Eligible Securities" for purposes of this Section 10.5 shall mean the shares constituting the Stock Consideration.

11. Miscellaneous

11.1 Amendment and Modification . The parties hereto may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

11.2 Expenses . Except as otherwise specifically provided in this Agreement, the parties agree that whether or not the sale of the Shares is consummated, LKQ will pay and bear all of the expenses incurred by it, and the Shareholders will bear all of the expenses incurred by the Company and the Shareholders in connection with the acquisition contemplated by this Agreement, including but not limited to legal, tax, and accounting related expenses. The reasonable cost of any environmental site assessment conducted by CTL Engineering, Inc. and real estate appraisal conducted by CB Richard Ellis Real Estate Services, Inc. will be borne 50% by LKQ and 50% by the Shareholders.

11.3 Certain Definitions . For purposes of this Agreement:

11.3.1 The "best knowledge and belief of the Shareholders and the Cruikshanks" shall include anything which the officers, shareholders or directors of the Company or any of its subsidiaries actually know or, in the non-negligent performance of their regular duties or in their capacities as such officers, shareholders or directors, reasonably should know.

11.3.2 An "affiliate" means with respect to any person, another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person.

11.3.3 "Material Adverse Effect" means, when used in connection with LKQ or the Company, any effect that either individually, or in the aggregate with all other such effects relating to the same occurrence, factual circumstance or situation, is materially

adverse to the business, assets, properties, condition (financial or otherwise), results of operations or business prospects of such party and its subsidiaries taken as a whole.

11.3.4 A “person” shall include an individual, corporation, partnership, joint venture, limited liability company, association, trust, unincorporated organization or other entity.

11.3.5 A “subsidiary” of any person means another person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first person.

11.3.6 A “Consolidated Subsidiary” means a subsidiary of LKQ which was a subsidiary of LKQ on December 31, 2003.

11.4 Binding Effect . This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives.

11.5 Entire Agreement . This instrument, the exhibits attached hereto and the Disclosure Schedule and any other agreement executed by the parties hereto simultaneous herewith contain the entire agreement of the parties hereto with respect to the sale of the Shares and the other transactions contemplated herein, and supersede all prior understandings and agreements of the parties with respect to the subject matter hereof. Any reference herein to this Agreement shall be deemed to include the exhibits attached hereto, the Disclosure Schedule, and any other agreements executed by the parties hereto simultaneous herewith.

11.6 Headings . The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

11.7 Execution in Counterpart . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

11.8 Notices . Any notice, request, information or other document to be given hereunder shall be in writing. Any notice, request, information or other document shall be deemed duly given when deposited in the U.S. mail sent by registered or certified mail, postage prepaid, to the intended recipient, addressed as follows:

If to the Shareholders or the Cruikshanks:

Robert H. Cruikshank, Trustee or Rowena R. Cruikshank, Trustee
1344 Spanish Trail Court
Blacklick, Ohio 43004

with a copy to:

James R. Moats
Carlile Patchen & Murphy LLP
366 East Broad Street
Columbus, Ohio 43215
Fax: (614) 221-0216

If to LKQ:

LKQ Corporation
120 North LaSalle Street, Suite 3300
Chicago, Illinois 60602
Attention: General Counsel
Fax: (312) 621-1969

with a copy to:

Bell, Boyd & Lloyd
70 West Madison Street, Suite 3300
Chicago, Illinois 60602-4207
Attention: J. Craig Walker
Fax: (312) 372-2098

Any party may send any notice, request, information or other document to be given hereunder using any other means (including personal delivery, courier, messenger service, facsimile transmission, telex or ordinary mail), but no such notice, request, information or other document shall be deemed duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change of address in the manner herein provided for giving notice.

11.9 Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and to be performed wholly therein.

11.10 Venue and Submission to Jurisdiction

11.10.1 To the maximum extent possible under applicable law and rules of civil procedure, each of the parties agrees that any action brought by the Shareholders or the Cruikshanks to enforce their rights under this Agreement or any of the other agreements contemplated hereby shall be brought in the United States District Court for the Northern District of Illinois (Eastern Division) or in the Circuit Court of Cook County, Illinois.

11.10.2 In order to facilitate the ability of the Shareholders and the Cruikshanks to enforce their rights under this Agreement and other agreements contemplated hereby in accordance with subsection 11.10.1, each of the parties hereby (i) expressly submits himself or itself, as the case may be, for such purpose only, to the personal jurisdiction of

the United States District Court for the Northern District of Illinois (Eastern Division) and the Circuit Court of Cook County, Illinois and (ii) expressly agrees that service of process may be had upon such person pursuant to the rules pertaining to service of process contained in the Illinois Long-Arm Statute, Chap. 735 Paragraph 5/2-209 Ill. Comp. Stat. (1997) and the Rules of the Court pertaining thereto.

11.10.3 To the maximum extent possible under applicable law and rules of civil procedure, each of the parties agrees that any action brought by LKQ to enforce its rights under this Agreement, or any of the other agreements contemplated hereby, shall be brought in the United States District Court for the Southern District of Ohio or in the Court of Common Pleas, Franklin County, Ohio.

11.10.4 In order to facilitate the ability of LKQ to enforce its rights under this Agreement and the other agreements contemplated hereby in accordance with subsection 11.10.3, each of the parties hereby (i) expressly submits himself or itself, as the case may be, for such purpose only, to the personal jurisdiction of the United States District Court for the Southern District of Ohio or the Court of Common Pleas, Franklin County, Ohio and (ii) expressly agrees that the service of process may be had upon such person pursuant to the rules pertaining to service of process contained in the applicable Ohio Long-Arm Statute.

11.10.5 All costs and expenses (including reasonable attorney fees and expenses) of each party in any action brought under this Agreement or any of the other agreements contemplated hereby shall be borne and paid in accordance with the determination of the trier of fact in such action, who shall take into account in such determination which party (if any) has prevailed.

11.11 Further Assurances . In the event that at any time after the Closing Date further action is necessary to carry out the purposes of this Agreement, the parties shall take all such necessary action.

11.12 Drafting . This Agreement is deemed to have been drafted jointly by the parties and any uncertainty or ambiguity shall not be construed for or against any party as a result of the attribution of drafting to any party.

11.13 Gender. Any reference to the male gender herein shall not be interpreted as excluding the female or neuter gender.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

LKQ CORPORATION

By /s/ Mark T. Spears

Title Senior Vice President &
Chief Financial Officer

SHAREHOLDERS:

/s/ Robert H. Cruikshank

Robert H. Cruikshank, Trustee of the Robert H. Cruikshank
Trust dated November 17, 2003

/s/ Rowena R. Cruikshank

Rowena R. Cruikshank, Trustee of the Rowena R. Cruikshank
Trust dated November 17, 2003

CRUIKSHANKS:

/s/ Robert H. Cruikshank

Robert H. Cruikshank

/s/ Rowena R. Cruikshank

Rowena R. Cruikshank

CREDIT AGREEMENT

DATED AS OF FEBRUARY 17, 2004

AMONG

LKQ CORPORATION,

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

**LASALLE BANK NATIONAL ASSOCIATION,
as Syndication Agent,**

**BANK ONE, NA,
as Documentation Agent,**

**NATIONAL CITY BANK,
as Co-Agent,**

**BANC OF AMERICA SECURITIES LLC,
as Arranger**

and

THE OTHER FINANCIAL INSTITUTIONS PARTY HERETO

TABLE OF CONTENTS

ARTICLE I DEFINITIONS

- 1.1. Defined Terms.
- 1.2. Other Interpretive Provisions.
 - (a) Defined Terms.
 - (b) The Agreement.
 - (c) Certain Common Terms.
 - (d) Performance; Time.
 - (e) Contracts.
 - (f) Laws.
 - (g) Captions.
 - (h) Independence of Provisions.
 - (i) Interpretation.
- 1.3. Accounting Principles.

ARTICLE II THE CREDITS

- 2.1. Amounts and Terms of Commitments.
- 2.2. Notes.
- 2.3. Procedure for Revolving Borrowing and Issuance of Letters of Credit.
- 2.4. Conversion and Continuation Elections.
- 2.5. Voluntary Termination or Reduction of Commitments.
- 2.6. Optional Prepayments.
- 2.7. Mandatory Prepayments of Loans for Asset Dispositions and Events of Loss.
- 2.8. Repayment.
- 2.9. Interest.
- 2.10. Fees.
 - (a) Fee Letter.
 - (b) Non-Use Fee.
 - (c) Letter of Credit Fees.
 - (d) Upfront Fee.
- 2.11. Computation of Fees and Interest.
- 2.12. Payments by the Company.
- 2.13. Payments by the Lenders to the Administrative Agent.
- 2.14. Sharing of Payments, Etc.
- 2.15. Certain Letter of Credit Provisions.
- 2.16. Swing Line Loans.
- 2.17. Aggregate Commitment Increase Option.

ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

- 3.1. Taxes.
- 3.2. Illegality.

- 3.3. Increased Costs and Reduction of Return.
- 3.4. Funding Losses.
- 3.5. Inability to Determine Rates.
- 3.6. Certificates of the Lenders.
- 3.7. Replacement of Certain Lenders.
- 3.8. Survival.

ARTICLE IV CONDITIONS PRECEDENT

- 4.1. Conditions of Initial Loans.
 - (a) Credit Agreement and Revolving Notes.
 - (b) Resolutions; Incumbency.
 - (c) Articles of Incorporation; By-laws and Good Standing.
 - (d) Loan Party Guaranties.
 - (e) Lien Searches.
 - (f) Insurance.
 - (g) Legal Opinions.
 - (h) Payment of Fees.
 - (i) Closing Certificate.
 - (j) Financial Statements.
 - (k) Consents.
 - (l) Due Diligence.
 - (m) Fee Letter.
 - (n) Other Documents.
- 4.2. Conditions to All Borrowings and Issuance of Letters of Credit.
 - (a) Notice of Borrowing or Continuation/Conversion.
 - (b) Continuation of Representations and Warranties.
 - (c) No Existing Default.

ARTICLE V REPRESENTATIONS AND WARRANTIES

- 5.1. Corporate Existence and Power.
- 5.2. Corporate Authorization; No Contravention.
- 5.3. Governmental Authorization.
- 5.4. Binding Effect.
- 5.5. Litigation.
- 5.6. No Default.
- 5.7. Use of Proceeds; Margin Regulations.
- 5.8. Title to Properties.
- 5.9. Taxes.
- 5.10. Financial Condition.
- 5.11. Environmental Matters.
- 5.12. Regulated Entities.
- 5.13. No Burdensome Restrictions.
- 5.14. Solvency.
- 5.15. Labor Relations.
- 5.16. Copyrights, Patents, Trademarks and Licenses, etc.

- 5.17. Subsidiaries; Capitalization..
- 5.18. Broker's; Transaction Fees.
- 5.19. Insurance.
- 5.20. Business Locations.
- 5.21. Full Disclosure.
- 5.22. ERISA Matters.

ARTICLE VI AFFIRMATIVE COVENANTS

- 6.1. Financial Statements.
- 6.2. Certificates; Other Information.
- 6.3. Notices.
- 6.4. Preservation of Corporate Existence, Etc.
- 6.5. Maintenance of Property.
- 6.6. Insurance.
- 6.7. Payment of Obligations.
- 6.8. Compliance with Laws.
- 6.9. Inspection of Property and Books and Records.
- 6.10. Environmental Laws.
- 6.11. Use of Proceeds.
- 6.12. Solvency.
- 6.13. Subsidiaries.
- 6.14. Further Assurances.
- 6.15. Depository Accounts.

ARTICLE VII NEGATIVE COVENANTS

- 7.1. Limitation on Liens.
- 7.2. Disposition of Assets.
- 7.3. Consolidations and Mergers.
- 7.4. Loans and Investments.
- 7.5. Limitation on Indebtedness.
- 7.6. Transactions with Affiliates.
- 7.7. Use of Proceeds.
- 7.8. Contingent Obligations.
- 7.9. Joint Ventures.
- 7.10. Unconditional Purchase Options.
- 7.11. Restricted Payments.
- 7.12. Net Worth.
- 7.13. Fixed Charge Coverage Ratio.
- 7.14. Senior Funded Debt to EBITDA Ratio.
- 7.15. Total Funded Debt to EBITDA Ratio.
- 7.16. Change in Business.
- 7.17. Change in Structure.
- 7.18. Accounting Changes.
- 7.19. Other Contracts.
- 7.20. Management Fees.

- 7.21. Subsidiaries.
- 7.22. Pension Plans.
- 7.23. Amendment of Documents.

ARTICLE VIII EVENTS OF DEFAULT

- 8.1. Event of Default.
 - (a) Non-Payment.
 - (b) Representation or Warranty.
 - (c) Specific Defaults.
 - (d) Other Defaults.
 - (e) Cross-Default.
 - (f) Insolvency; Voluntary Proceedings.
 - (g) Involuntary Proceedings.
 - (h) Monetary Judgments.
 - (i) Non-Monetary Judgments.
 - (j) Change of Control.
 - (k) Adverse Change.
 - (l) Loan Party Defaults.
 - (m) ERISA Liabilities.
- 8.2. Remedies.
- 8.3. Rights Not Exclusive.

ARTICLE IX THE AGENTS

- 9.1. Appointment and Authorization.
- 9.2. Delegation of Duties.
- 9.3. Liability of the Administrative Agent.
- 9.4. Reliance by the Administrative Agent.
- 9.5. Notice of Default.
- 9.6. Credit Decision.
- 9.7. Indemnification.
- 9.8. Agents in their Individual Capacity.
- 9.9. Successor Administrative Agent.
- 9.10. Syndication Agent, Documentation Agent and Co-Agent.

ARTICLE X MISCELLANEOUS

- 10.1. Amendments and Waivers.
- 10.2. Notices.
- 10.3. No Waiver; Cumulative Remedies.
- 10.4. Costs and Expenses.
- 10.5. Indemnity.
 - (a) General Indemnity.
 - (b) Environmental Indemnity.
 - (c) Survival; Defense.
- 10.6. Marshalling; Payments Set Aside.
- 10.7. Successors and Assigns.
- 10.8. Assignments, Participations, etc.

- 10.9. Set-off.
- 10.10. Collateral Account.
- 10.11. Notification of Addresses, Lending Offices, Etc.
- 10.12. Counterparts.
- 10.13. Severability.
- 10.14. No Third Parties Benefited.
- 10.15. Time.
- 10.16. Governing Law and Jurisdiction.
- 10.17. Waiver of Jury Trial.
- 10.18. Automatic Debits of Fees.
- 10.19. Entire Agreement.
- 10.20. Patriot Act.

CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of February 17, 2004, among LKQ Corporation, a Delaware corporation (the “Company”), the financial institutions from time to time party to this Agreement (collectively, the “Lenders”; individually, a “Lender”), Bank of America, N.A., as Administrative Agent for the Lenders, LaSalle Bank National Association, as Syndication Agent for the Lenders, Bank One, NA, as Documentation Agent for the Lenders, National City Bank, as Co-Agent for the Lenders and Banc of America Securities LLC, as Arranger.

WHEREAS, pursuant to this Agreement, the Lenders have agreed to make available to the Company a revolving credit facility upon the terms and conditions set forth therein;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1.

ARTICLE I **DEFINITIONS**

1.1. Defined Terms.

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Account Receivable” means any “account” (as defined in the UCC) of each Loan Party and other rights of each Loan Party to payment for goods sold or leased or for services rendered, which are not evidenced by an instrument or chattel paper and whether or not earned by performance.

“Acquisition” means the acquisition by the Company or any of its Subsidiaries of all or substantially all of the Properties of any Person or a division or business of any Person, or all or substantially all of the stock or other ownership interests of any Person, including, without limitation, by means of a merger or other combination.

“Administrative Agent” means BOA in its capacity as (i) administrative agent for the Lenders hereunder, and (ii) provider of Swing Line Loans hereunder, as the context requires, and any successor administrative agent.

“Administrative Agent-Related Persons” means BOA and any successor administrative agent arising under Section 9.9, together with Affiliates of BOA or any such successor administrative agent, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Administrative Agent’s Payment Office” means the address for payments set forth on the signature page hereto in relation to the Administrative Agent or such other address as the Administrative Agent may from time to time specify in accordance with Section 10.2.

“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, by contract or otherwise. Without limitation, any director, executive officer or beneficial owner of 5% or more of the equity of a Person shall for the purposes of this Agreement, be deemed to control the other Person. Notwithstanding the foregoing, no Lender shall be deemed an “Affiliate” of the Company or of any other Loan Party.

“Agents” means, collectively, the Administrative Agent, the Syndication Agent, the Documentation Agent and the Co-Agent.

“Aggregate Commitment” means the combined Commitments of the Lenders, in the initial aggregate principal amount of Seventy-Five Million Dollars (\$75,000,000), as such amount may be increased pursuant to Section 2.17 or reduced from time to time pursuant to Section 2.5.

“Agreement” means this Credit Agreement.

“Alternate Base Rate” means, for any day, the higher of: (a) the Base Rate and (b) the Federal Funds Rate plus .50%.

“Applicable Margin” means at any time (a) with respect to the unpaid principal amount of each IBOR Loan, the applicable percentage set forth below in the column entitled “Applicable Margin for IBOR Loans” opposite the Total Funded Debt to EBITDA Ratio in effect at such time; (b) with respect to the unpaid principal amount of each Base Rate Loan, the applicable percentage set forth below in the column entitled “Applicable Margin for Base Rate Loans” opposite the Total Funded Debt to EBITDA Ratio in effect at such time; (c) with respect to the unpaid principal amount of each Optional Floating Rate Loan, the applicable percentage set forth below in the column entitled “Applicable Margin for Optional Floating Rate Loans” opposite the Total Fund Debt to EBITDA Ratio in effect at such time; and (d) with respect to the non-use fees described in subsection 2.10(b), the applicable percentage set forth below in the column entitled “Applicable Margin for Non-Use Fees” opposite the Total Funded Debt to EBITDA Ratio in effect at such time, as follows:

Level	Total Funded Debt to EBITDA Ratio	Applicable Margin For IBOR Loans	Applicable Margin For Base Rate Loans	Applicable Margin For Optional Floating Rate Loans	Applicable Margin For Non-Use Fees
1	Less than or equal to 1.0 : 1.0	0.875%	0%	0.875%	0.20%
2	Greater than 1.00 : 1.0 but less than or equal to 1.50 : 1.0	1.000%	0%	1.000%	0.25%
3	Greater than 1.50 : 1.0 but less than or equal to 2.00 : 1.0	1.250%	0%	1.250%	0.30%
4	Greater than 2.00 : 1.0	1.375%	0%	1.375%	0.35%

The initial Applicable Margin for IBOR Loans, Base Rate Loans, Optional Floating Rate Loans, and Non-Use Fees shall be set at Level 1 in the above table and each initial Applicable Margin shall remain in effect until the delivery of the Company's audited financial statements, and related Compliance Certificate with respect to the fiscal year ending December 31, 2003. Thereafter, the Applicable Margin shall be based on the Total Funded Debt to EBITDA Ratio in effect as set forth in the Compliance Certificate most recently delivered by the Company to the Administrative Agent. Changes in the Applicable Margin resulting from a change in the Total Funded Debt to EBITDA Ratio shall become effective upon delivery by the Company to the Administrative Agent of a new Compliance Certificate pursuant to subsection 6.2 (b). If the Company shall fail to deliver a Compliance Certificate within 45 days after the end of any fiscal quarter (or within 60 days after the end of any fiscal quarter that is the last fiscal quarter in any fiscal year) as required pursuant to subsection 6.2(b), the Applicable Margin from and including the 46th day after the end of such fiscal quarter (or the 61st day after the end of such fiscal quarter for any fiscal quarter that is the last fiscal quarter in any fiscal year), to but not including the date the Company delivers to the Administrative Agent a Compliance Certificate shall conclusively be presumed to equal the highest Applicable Margin specified in the above chart for the type of loan or fee. Whenever a change in the Total Funded Debt to EBITDA Ratio results in an adjustment to the Applicable Margin, the Company shall deliver to the Administrative Agent, together with the required Compliance Certificate, a Pricing Change Certificate.

"Assignee" has the meaning specified in subsection 10.8(a).

"Assignment and Acceptance" has the meaning specified in subsection 10.8(a).

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

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

"Bank One" means Bank One, NA.

“Base Rate” means, for any day the rate of interest in effect for such day as publicly announced from time to time by BOA in Chicago, Illinois, as its “reference rate” (such rate set by BOA based upon various factors including BOA’s costs and desired return, general economic conditions and other factors, and used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate). Any change in the reference rate announced by BOA 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 that bears interest based on the Alternative Base Rate.

“BOA” means Bank of America, NA., a national banking association.

“Borrowing” means a Revolving Borrowing or a Swing Line Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in Chicago or San Francisco are authorized or required by law to close; provided, that with respect to all notices, determinations, continuances, conversions, fundings and payments in connection with IBOR Loans, a Business Day shall not include any day on which trading by and between banks in Dollar deposits may not be carried on in the applicable interbank market.

“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 Expenditures” means, for any period and with respect to any Person, the aggregate of all expenditures paid by such Person and its Subsidiaries for the acquisition or leasing of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which should be capitalized under GAAP on a consolidated balance sheet of such Person and its Subsidiaries.

“Capital Lease” means, with respect to any Person, any leasing or similar arrangement which, in accordance with GAAP, is classified as a capital lease on a consolidated balance sheet of such Person.

“Capital Lease Obligations” means, with respect to any Person, without duplication, the principal component of all monetary obligations of such Person or any of its Subsidiaries under Capital Leases of such Person or any such Subsidiary.

“Cash Equivalents” means:

- (a) securities issued or fully guaranteed or insured by the United States Government or any agency thereof and backed by the full faith and credit of the United States having maturities of not more than six months from the date of acquisition;
- (b) certificates of deposit, time deposits, Eurodollar time deposits, repurchase agreements, reverse repurchase agreements, or bankers’ acceptances, having in each case a tenor of not more than six months, issued by any bank, or by any U.S. commercial bank or any branch or agency of a non-U.S. bank licensed to conduct business in the U.S. having combined capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) whose short term securities are rated at least A-1 by Standard & Poor’s Corporation and P-1 by Moody’s Investors Service Inc., and not subject to any right of setoff by such issuer (other than any such issuer that is also a Lender); and
- (c) commercial paper of an issuer rated at least A-1 by Standard & Poor’s Corporation or P-1 by Moody’s Investors Service Inc. and in either case having a tenor of not more than six months.

“CERCLA” has the meaning specified in the definition of “Environmental Laws.”

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

- (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding the Flynn Group and excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire (such right, an “option right”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 30% or more of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully diluted basis (and, taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or
- (b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of such Person cease to be composed of individuals: (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved or recommended by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved or

recommended by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs solely as a result of an actual or threatened solicitation of proxies or consents for the election of such director by any person or group other than the Flynn Group and other than a solicitation for the election of one or more directors by or on behalf of the board of directors).

“Closing Date” means the date on which all conditions precedent set forth in Section 4.1 are satisfied or waived by the Administrative Agent and all the Lenders.

“Co-Agent” means NCB, in its capacity as co-agent for the Lenders hereunder.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Collateral Account” has the meaning specified in Section 10.10.

“Commitment”, with respect to each Lender, has the meaning specified in Section 2.1.

“Commitment Percentage” means, as to any Lender, the percentage equivalent of such Lender’s Commitment divided by the Aggregate Commitment.

“Company” has the meaning specified in the introductory clause hereto.

“Compliance Certificate” means a certificate duly completed and executed by a Responsible Officer of the Company, substantially in the form of Exhibit A hereto.

“Consolidated Net Cash Interest Expense” means, as to any Person for any period, gross consolidated cash interest expense payable by such Person during such period (including all commissions, discounts, fees and other charges paid in connection with standby letters of credit and similar instruments) in respect of all Indebtedness (including without limitation Subordinated Debt and Seller Debt) for such Person, plus (a) the portion of the upfront costs and expenses for Rate Contracts (to the extent not included in gross consolidated interest expense) of such Person fairly allocated to such Rate Contracts as expenses and payable by such Person during such period, plus (b) fees payable by such Person pursuant to Section 2.10 (to the extent not included in gross consolidated interest expense) during such period, plus (c) the portion of any payments made by such Person in respect of Capital Leases of such Person allocated to interest expense (to the extent not included in gross consolidated interest expense) during such period, less (d) interest income of such Person for such period and Rate Contracts payments received by such Person during such period; less (e) in the case of the Company, fees paid by the Company during such period pursuant to Section 2.10(a); all as determined in accordance with GAAP for such Person and its Subsidiaries.

“Contingent Obligation” means, as to any Person, (a) any Guaranty Obligation of that Person; and (b) any direct or indirect obligation or liability, contingent or otherwise, of that Person, (i) in respect of 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, (ii) 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 (iii) in respect of any Rate Contract that is not entered into in connection with a bona fide hedging operation that provides benefits to such Person. The amount of any Contingent Obligation shall (subject, in the case of Guaranty Obligations, to the last sentence of the definition of “Guaranty Obligation”) be deemed equal to the maximum reasonably anticipated liability in respect thereof, and shall, with respect to item (b)(iii) of this definition, be marked to market on a current basis.

“Contractual Obligations” means, as to any Person, any obligation or liability under 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 Date” means any date on which the Company converts a Base Rate Loan to an IBOR Loan, an IBOR Loan to a Base Rate Loan, a Base Rate Loan to an Optional Floating Rate Loan, a Optional Floating Rate Loan to a Base Rate Loan or an Optional Floating Rate Loan to an IBOR Loan.

“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.

“Disbursement Date” has the meaning specified in subsection 2.15(b).

“Disposition” means (i) the sale, lease, conveyance or other disposition of Property, other than sales or other dispositions expressly permitted under subsection 7.2(a) or 7.2(b), and (ii) the sale or transfer by the Company or any Subsidiary of the Company of any equity securities issued by any Subsidiary of the Company to any Person other than the Company or any Subsidiary of the Company.

“Documentation Agent” means Bank One, in its capacity as documentation agent for the Lenders hereunder.

“Dollars”, “dollars” and “\$” each mean lawful money of the United States.

“Domestic Lending Office” means, with respect to each Lender, the office of that such Lender designated as such in the signature pages hereto or such other office of

such Lender as it may from time to time specify to the Company and the Administrative Agent.

“EBITDA” means, for any period, for any Person, determined for such Person and its Subsidiaries on a consolidated basis and 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 the amortization of intangibles of any kind to the extent included in the determination of such net income (or loss), plus (c) all amounts treated as expenses for interest to the extent included in the determination of such net income (or loss), plus (d) all accrued taxes on or measured by income to the extent included in the determination of such net income (or loss), plus (e) any other non-cash charges, plus (f) the effect of financial accounting standard 142 related to goodwill; provided, however, that net income (or loss) shall be computed for these purposes without giving effect to extraordinary losses or extraordinary gains; provided, further, that EBITDA of the Company and its Subsidiaries for any period shall include pro forma EBITDA, for such period, of the target of any Permitted Acquisition consummated during such period, including any add-backs and adjustments to EBITDA listed on Schedule 1.1(a) and any other add-backs and adjustments to EBITDA approved by all Lenders.

“EBITDAR” means, for any period, for any Person, determined for such Person and its Subsidiaries on a consolidated basis and in accordance with GAAP, EBITDA for such period plus all rental payments made by the Company during such period.

“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), 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, placement, discharge, emission or release (including intentional and unintentional, negligent and non-negligent, sudden or non-sudden, accidental or non-accidental, placement, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, or from Property, whether or not owned by the Company or any of its Subsidiaries.

“Environmental Laws” means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters; including 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, the Emergency Planning and Community Right-to-Know Act.

“Environmental Permits” has the meaning specified in subsection 5.11(b).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ERISA Affiliate” means any corporation, partnership, or other trade or business (whether or not incorporated) that is, along with the Company, a member of a controlled group of corporations or a controlled group of trades or businesses, as described in Sections 414 (b) and 414(c), respectively, of the Code or Section 4001 of ERISA, or a member of the same affiliated service group within the meaning of Section 414(m) of the Code.

“Eurodollar Reserve Percentage” means for any day for any Interest Period the maximum reserve percentage (expressed as a decimal, rounded upward to the nearest 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 Federal Reserve Board 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” under Regulation D of the Federal Reserve Board) having a term comparable to such Interest Period.

“Event of Default” means any of the events or circumstances specified in Section 8.1.

“Event of Loss” means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) 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, as amended, and the regulations promulgated thereunder.

“Existing Credit Agreement” has the meaning specified in subsection 2.3(g).

“Existing Letters of Credit” has the meaning specified in subsection 2.3(g).

“Federal Funds Rate” means, for any day, the rate per annum set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Federal Reserve Board (including any such successor, “H.15(519)”) for such day (or, if such day is not a Business Day, for the Business Day preceding such day) opposite the caption “Federal Funds (Effective)”. If on any day upon which the Federal Funds Rate is to be determined the rate for such day (or, if such day is not a Business Day, for the Business Day preceding such day) is not yet published in H.15(519), the rate for such day, for purposes of such determination, will be the rate set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for U.S. Government Securities, or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, the “Composite 3:30 p.m. Quotation”) for such day (or, if such day is not a

Business Day, for the Business Day preceding such day) under the caption “Federal Funds Effective Rate.” If on any day upon which the Federal Funds Rate is to be determined the rate for such day (or, if such day is not a Business Day, for the Business Day preceding such day) is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations, the rate for such day, for purposes of such determination, will be the arithmetic mean as determined by the Administrative Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York time) on that day (or, if such day is not a Business Day, on the Business Day preceding such day) by each of three leading brokers of Federal funds transactions in New York City selected by the Administrative Agent.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System, or any entity succeeding to any of its principal functions.

“Fee Letter” has the meaning specified in subsection 2.10(a).

“Fixed Charge Coverage Ratio” means, for any period, the ratio of (a) EBITDAR for the Company for such period less Maintenance Capital Expenditures of the Company during such period, less cash federal, state, local and foreign income taxes of the Company paid during such period, excluding deferred taxes to (b) Fixed Charges for such period.

“Fixed Charges” means, with respect to any fiscal period of the Company on a consolidated basis, without duplication, Consolidated Net Cash Interest Expense of the Company during such period, scheduled principal payments of Indebtedness of the Company (excluding mandatory prepayments of the Loans pursuant to Section 2.7) during such period, and rent payments made by the Company during such period.

“Flynn Group” means (a) Donald Flynn, (b) the spouse, lineal descendants and spouses of the lineal descendents of Donald Flynn, (c) trusts created in whole or in part for the benefit of any or all of the Persons named in clauses (a) and (b) above, and estates and legal representatives of the Persons named in clauses (a) and (b) above, and (d) any corporation, limited liability company, partnership, or other entity controlled by the Persons named in clauses (a) and (b) above.

“Form W-8BEN” has the meaning specified in subsection 3.1(f).

“Form W-8ECI” has the meaning specified in subsection 3.1(f).

“Funded Debt” means, at any time, for any Person, determined for such Person and its Subsidiaries on a consolidated basis and in accordance with GAAP, the sum of the following, without duplication: (i) Indebtedness for borrowed money, (ii) Capital Lease Obligations and (iii) purchase money Indebtedness; but shall specifically exclude unsecured guaranties acceptable to the Administrative Agent.

“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 accounting profession), or in such other statements by such other entity as may be in general use by significant segments of the U.S. accounting profession, which are applicable to the circumstances as of the date of determination.

“Governmental Authority” means 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.

“Guaranty Obligation” means, as applied to any Person, any direct or indirect liability of that Person with respect to any Indebtedness, lease, dividend, Surety Instrument or other obligation (the “primary obligations”) of another Person (the “primary obligor”), including any obligation of that Person, whether or not contingent, (a) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (b) to advance or provide funds (i) for the payment or discharge of any such primary obligation, or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof; in each case (a), (b), (c) or (d), including arrangements wherein the rights and remedies of the holder of the primary obligation are limited to repossession or sale of certain property of such Person. The amount of any Guaranty Obligation shall be deemed equal to 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.

“Hazardous Materials” means all those substances which are regulated by, or which may form the basis of liability under, any Environmental Law, including all substances 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.

“IBOR” means, for each Interest Period in respect of IBOR Loans comprising part of the same Revolving Borrowing, an interest rate per annum (rounded upward to the nearest 1/100th of 1%) determined pursuant to the following formula:

$$\text{IBOR} = \frac{\text{Non-Adjusted IBOR}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

The IBOR shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“IBOR Loan” means a Loan that bears interest based on the IBOR.

“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 pursuant to ordinary terms); (c) all non-contingent reimbursement or payment 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 Capital Lease Obligations; (g) all net obligations with respect to Rate Contracts; (h) all indebtedness referred to in clauses (a) through (g) 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 contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; and (i) all Guaranty Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (g) above.

“Indemnified Liabilities” has the meaning specified in subsection 10.5(a).

“Indemnified Person” has the meaning specified in subsection 10.5(a).

“Insolvency Proceeding” means (a) any case, action or proceeding 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.

“Interest Payment Date” means, with respect to any IBOR Loan, the last day of each Interest Period applicable to such Loan and, with respect to any Base Rate Loan or any Optional Floating Rate Loan, the last Business Day of each calendar quarter.

“Interest Period” means, with respect to any IBOR Loan, the period commencing on the Business Day the Loan is disbursed or continued or on the Conversion Date on which a Loan is converted to an IBOR Loan and ending on the date one, two or three months thereafter, as selected by the Company in its Notice of Borrowing or Notice of Conversion/Continuation;

provided, that:

(i) if any Interest Period pertaining to an IBOR Loan would otherwise end on a day which is not a Business Day, that Interest Period shall be extended to the next succeeding Business Day unless, in the case of an IBOR Loan, 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 immediately preceding Business Day; and

(ii) any Interest Period pertaining to an IBOR Loan 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.

“Inventory” means any and all “inventory” (as defined in the UCC) now owned or hereafter acquired by each Loan Party, wherever located, including without limitation finished goods, raw materials, work in process and other materials and supplies (including packaging and shipping materials) used or consumed in the manufacture or production thereof, and goods which are returned to or repossessed by any Loan Party.

“Issuer” means BOA in its capacity as issuer of the Letters of Credit (or any other Person to whom BOA may assign its obligations pursuant to subsection 10.8(g)).

“Joint Venture” means a single-purpose corporation, partnership, joint venture or other legal arrangement (whether created pursuant to contract or conducted through a separate legal entity) now or hereafter formed by the Company or any of its Subsidiaries with another Person in order to conduct a common venture or enterprise with such Person.

“LaSalle” means LaSalle Bank National Association.

“LC Amount” means at any time the aggregate undrawn face amount of all Letters of Credit.

“Lender” has the meaning specified in the introductory clause hereto, and, as the context requires, includes the Administrative Agent in its capacity as the provider of Swing Line Loans hereunder.

“Lending Office” means, with respect 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, opposite its name on the applicable signature page hereto, or such other office or offices of such Lender as it may from time to time notify the Company and the Administrative Agent.

“Letters of Credit” means letters of credit issued by Issuer for the account of the Company.

“Letter of Credit Sublimit” has the meaning specified in subsection 2.3(f).

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or other security interest or preferential arrangement of any kind or nature whatsoever (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 Obligation or any financing lease having substantially the same economic effect as any of the foregoing) 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 the Company pursuant to Article II (which may be a Base Rate Loan or an IBOR Loan), or a Swing Line Loan (which may be a Base Rate Loan or an Optional Floating Rate Loan).

“Loan Documents” means this Agreement, the Revolving Notes, the Loan Party Guaranties and all documents delivered to the Administrative Agent in connection therewith and all Rate Contracts between the Company and any Lender.

“Loan Party” means the Company and each Subsidiary of the Company.

“Loan Party Guaranty” means the Guaranty executed by each then-existing Subsidiary of the Company and delivered to the Administrative Agent on the Closing Date, and each Guaranty subsequently executed by a Subsidiary of the Company and delivered to the Administrative Agent, as each has been amended to date and is amended from time to time hereafter.

“Maintenance Capital Expenditures” means, with respect to any Person, any Capital Expenditures that are made either to (a) replace or repair an existing capital asset or (b) extend the useful life of an existing capital asset.

“Majority Lenders” means at any time, Lenders having 51% or more of the Aggregate Commitment or, if the Commitments have been terminated pursuant to Section 8.2, Lenders holding in the aggregate 51% or more of the sum of the aggregate unpaid principal amount of the Loans and the LC Amount (with the aggregate amount of each Lender’s participation in Letters of Credit and Swing Line Loans being deemed “held” by such Lender for purposes of this definition).

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the Federal Reserve Board.

“Material Acquisition” means an Acquisition with respect to which the Total Consideration payable exceeds \$5,000,000.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, assets, liabilities (actual or contingent) 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 the other Loan Parties taken as a whole, to perform under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of any Loan Document.

“Material Loan Party” means, at any time, any Loan Party (i) the gross revenues of which for the fiscal year most recently ended are 15% or more of the consolidated gross revenues of the Company and its Subsidiaries for such fiscal year or (ii) the aggregate book value of the assets of which at such time are 15% or more of the aggregate book value of the consolidated assets of the Company and its Subsidiaries at such time, all as determined in accordance with GAAP.

“Multiemployer Plan” means a “multiemployer plan,” as defined in Section 4001(a)(3) of ERISA, that is maintained for the employees of the Company or any ERISA Affiliate.

“NCB” means National City Bank.

“Net Proceeds” means proceeds in cash, checks or other cash equivalent financial instruments (including Cash Equivalents) as and when received by the Person making a Disposition, net of: (a) the direct costs relating to such Disposition excluding amounts payable to any Affiliate of the Person making the Disposition, (b) taxes paid or payable as a result thereof, and (c) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Indebtedness secured by a Lien on the assets which are the subject of such Disposition but only if such Lien is permitted under the Loan Documents. “Net Proceeds” shall also include proceeds paid on account of any Event of Loss, net of: (i) all money actually, and permitted under the Loan Documents to be, applied to repair, replace, restore or substitute for the damaged Property, (ii) all of the costs and expenses reasonably incurred in connection with the collection of such proceeds, award or other payments, (iii) taxes paid or payable as a result thereof, and (iv) any amounts retained by or paid to parties having superior rights to such proceeds, awards or other payments but only if such superior rights are permitted under the Loan Documents.

“Net Worth” means shareholders’ equity of the Company as determined in accordance with GAAP.

“Non-Adjusted IBOR” means the rate of interest per annum determined by the Administrative Agent to be the rate of interest per annum (rounded upward to the nearest 1/100th of 1%) notified to the Administrative Agent by the Reference Bank as the rate of interest at which Dollar deposits in the approximate amount of the principal amount of the Loan to be made or continued as, or converted into, an IBOR Loan by the Reference Bank and having a maturity comparable to the Interest Period for such IBOR Loan would be offered to major banks in the offshore dollar interbank market at their request at or about 11:00 a.m. (New York City time) on the second Business Day prior to the commencement of such Interest Period.

“Notice of Borrowing” means (i) with respect to a Revolving Borrowing, a notice given by the Company to the Administrative Agent pursuant to Section 2.3, in substantially the form of Exhibit B and (ii) with respect to a Swing Line Borrowing, a notice given by the Company to the Administrative Agent pursuant to Section 2.16, in substantially the form of Exhibit C.

“Notice of Conversion/Continuation” means a notice given by the Company to the Administrative Agent pursuant to Section 2.4, in substantially the form of Exhibit D.

“Notice of Lien” means any “notice of lien” or similar document intended to be filed or recorded with any court, registry, recorder’s office, central filing office or other Governmental Authority for the purpose of evidencing, creating, perfecting or preserving the priority of a Lien securing obligations owing to a Governmental Authority.

“Obligations” means all Loans, and other Indebtedness, advances, debts, liabilities, obligations, covenants and duties owing by the Company to any Lender, any Agent, the Issuer, or any other Person required to be indemnified, that arises under any Loan Document or in connection with any interest rate cap, collar, swap or other agreement or arrangement designed to protect such Person against fluctuations in interest rates, in each case, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, reimbursement obligations with respect to Letters of Credit, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

“Offshore Lending Office” means with respect to each Lender, the office of such Lender designated as such in the signature pages hereto or such other office of such Lender as such Lender may from time to time specify to the Company and the Administrative Agent.

“Operating Lease” means, as applied to any Person, any lease of Property which is not a Capital Lease.

“Optional Floating Rate” means, for any day, the Federal Funds Rate plus .50%.

“Optional Floating Rate Loan” means a Loan that bears interest based on the Optional Floating Rate.

“Ordinary Course of Business” means, in respect of any transaction involving the Company or any other Loan Party, the ordinary course of such Person’s business, as conducted by any such Person not inconsistent with past practice and undertaken by such Person in good faith.

“Organization Documents” means (i) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument

relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, and all applicable resolutions of the board of directors of such corporation, (ii) for any partnership, the certificate of partnership, the partnership agreement and all applicable resolutions of the board of directors of such partnership's general partner and (iii) for any limited liability company, the limited liability company certificate or certificate of formation, the operating or similar agreement and all applicable resolutions of the board of directors of such limited liability company's managing member(s).

"Other Taxes" has the meaning specified in subsection 3.1(b).

"Participant" has the meaning specified in subsection 10.8(d).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Plan" means a "pension plan," as such term is defined in Section 3(2) of ERISA, that is subject to the provisions of Title IV of ERISA (other than a Multiemployer Plan) and to which the Company or any ERISA Affiliate may have any liability, including any liability by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Permitted Acquisition" means an Acquisition that satisfies each of the following conditions:

(i) the assets so acquired are employed, or, if such Acquisition is structured as a purchase of Securities, the Person so acquired presently conducts its business, in the same industry or a related industry, and in the same or related lines of business now conducted by the Company and its Subsidiaries;

(ii) at the time of such Acquisition, (a) no Default or Event of Default exists, or would be caused by the consummation thereof and (b) after giving effect to such Acquisition, the Company would be in compliance, on a pro forma basis, with the covenants set forth in Sections 7.12, 7.13, 7.14 and 7.15 of this Agreement, recomputed for the most recently ended period of 4 fiscal quarters;

(iii) the assets so acquired are located in the United States or Canada or, if such acquisition is structured as a purchase of Securities, the Person so acquired is organized under the laws of a state in the United States or a province of Canada and the assets owned by such Person are located in the United States or Canada; provided, that Acquisitions of assets located outside of the United States or Canada and Acquisitions of Securities of Persons organized outside of the United States or Canada and with assets located outside of the United States or Canada shall be permitted hereunder, so long as the aggregate Total Consideration related to assets or business

locations outside of the United States or Canada for all such Acquisitions in any fiscal year does not exceed \$2,000,000;

(iv) such Acquisition shall have been approved by the board of directors of the Person whose Properties or Securities are to be acquired;

(v) to the extent required by Section 6.13, the Administrative Agent shall have received such duly executed and delivered a Loan Party Guaranty of the Obligations executed by the Person so acquired or so created; provided, that in the case of any Acquisition other than a Material Acquisition, such items shall be delivered to the Administrative Agent no later than the last day of the month after the month in which such Acquisition was consummated;

(vi) in the case of a Material Acquisition, the Company shall have provided the Administrative Agent and the Lenders with pro forma Acquisition closing date financial statements for the Person who is to be acquired or whose Property is to be acquired in such Acquisition, based on the most recent monthly financial statements for such Person, which pro forma financial statements will detail any adjustments related to such Acquisition and include a computation of EBITDA for such Person for use in deriving pro forma EBITDA for the Company and its Subsidiaries for the next applicable testing date, including all add-backs that the Company proposes to use in order to so derive pro-forma EBITDA;

(vii) if Borrower's Total Funded Debt to EBITDA, determined as of the most recent calendar quarter and showing the effect of such Acquisition on a pro forma basis, including the prior 12 months' EBITDA of the Person who is to be acquired or whose Property is to be acquired in such Acquisition (based on the most recent monthly financial statements for such Person) is greater than 2.00 to 1.00, the Majority Lenders shall have consented in writing to such Acquisition;

(viii) if so requested by the Administrative Agent or the Majority Lenders, the Administrative Agent and the Lenders shall have received, as soon as is reasonably practicable, copies of the agreements, instruments and documents evidencing such Acquisition; and

(ix) in the case of each Material Acquisition, the Administrative Agent shall have received a certificate from a Responsible Officer of the Company, certifying to (a) the satisfaction of the conditions contained in clauses (i) - (viii) above and (b) certifying to the amount of the applicable Total Consideration and, in each case, showing all applicable computations.

"Permitted Liens" has the meaning specified in Section 7.1.

“Person” means an individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

“Pricing Change Certificate” means a certificate duly completed and executed by a Responsible Officer of the Company, substantially in the form of Exhibit E hereto.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

“Rate Contracts” means swap agreements (as such term is defined in Section 101 of the Bankruptcy Code), commodity options, equity or equity index swaps or options, bond options or swaptions, and any other agreements or arrangements designed to provide protection against fluctuations in interest or currency exchange rates.

“Reference Bank” means BOA; references to the Reference Bank shall be deemed to refer to BOA’s Grand Cayman Branch, Grand Cayman B.W.I. (or such other office as may be designated for such purpose by BOA).

“Reportable Event” has the meaning given to such term in ERISA.

“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 or the chief financial officer of the Company, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of the Company, or any other officer having substantially the same authority and responsibility.

“Revolving Borrowing” means a borrowing hereunder consisting of Loans made to the Company on the same day by the Lenders pursuant to Article II.

“Revolving Loan” has the meaning specified in Section 2.1.

“Revolving Loan Maximum Amount” means \$75,000,000, which is the Aggregate Commitment, as such amount may be increased pursuant to Section 2.17 or reduced from time to time pursuant to Section 2.5.

“Revolving Note” means a promissory note of the Company payable to the order of a Lender, in substantially the form of Exhibit F, evidencing the aggregate indebtedness of the Company to such Lender resulting from Revolving Loans made by such Lender.

“Revolving Termination Date” has the meaning specified in Section 2.8.

“SEC” means the Securities and Exchange Commission, or any entity succeeding to any of its principal functions.

“Securities” means “Securities” as such term is used in Section 2(l) of the Securities Act of 1933, as amended.

“Seller Debt” means, collectively, that principal portion of any liabilities, obligations or Indebtedness of the Company or any of its Subsidiaries that is incurred in order to finance all or a portion of the purchase price of a Permitted Acquisition and is owing to the seller or sellers in respect thereof.

“Senior Funded Debt” means, at any time, for any Person, determined for such Person and its Subsidiaries on a consolidated basis and in accordance with GAAP, all Funded Debt other than Subordinated Debt.

“Senior Funded Debt to EBITDA Ratio” means, as of any date, the ratio of (a) Senior Funded Debt as of such date to (b) EBITDA for the 12 month period ended on such date, all determined for the Company and its Subsidiaries on a consolidated basis and in accordance with GAAP.

“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(32) of the Bankruptcy Code and, in the alternative, for purposes of any applicable state fraudulent transfer law; (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) 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.

“Subordinated Debt” means, collectively, that portion of any liabilities, obligations or Indebtedness of the Company or any of its Subsidiaries (including without limitation any Seller Debt) that contains terms satisfactory to the Administrative Agent and is subordinated in a manner satisfactory to the Administrative Agent, as to right and time of payments of principal and interest thereon, to all of the Obligations.

“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 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.

“Substantial Loan Party” means, at any time, any Loan Party (i) the gross revenues of which for the fiscal year most recently ended are 5% or more of the consolidated gross revenues of the Company and its Subsidiaries for such fiscal year or (ii) the aggregate book value of the assets of which at such time are 5% or more of the aggregate book value of the consolidated assets of the Company and its Subsidiaries at such time, all as determined in accordance with GAAP.

“Surety Instruments” means all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

“Swing Line” means the uncommitted and discretionary revolving credit facility made available to the Company by the Administrative Agent pursuant to Section 2.16.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.16.

“Swing Line Loan” has the meaning specified in subsection 2.16(a).

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Aggregate Commitment. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitment.

“Syndication Agent” means LaSalle, in its capacity as syndication agent for the Lenders hereunder.

“Taxes” has the meaning specified in subsection 3.1(a).

“Total Cash Consideration” means total consideration paid or to be paid in cash or property (other than Securities of the Company) with respect to any Acquisition, including any deferred cash payments of any portion of the purchase price thereof.

“Total Consideration” means total consideration paid with respect to any Acquisition, including without limitation: (i) Total Cash Consideration, (ii) all amounts paid or to be paid pursuant to non-competition agreements and consulting agreements, (iii) the amount of Indebtedness assumed (and in the case of an Acquisition of Securities, the amount of Indebtedness of the Person to be acquired), (iv) the amount of Seller Debt incurred in connection with such Acquisition and (v) the amount of all transaction fees payable by any Loan Party.

“Total Funded Debt to EBITDA Ratio” means, as of any date, the ratio of (a) Funded Debt as of such date to (b) EBITDA for the 12-month period ended on such

date, all determined for the Company and its Subsidiaries on a consolidated basis and in accordance with GAAP.

“Transferee” has the meaning specified in subsection 10.8(e).

“UCC” means the Uniform Commercial Code as in effect in the State of Illinois.

“United States” and “U.S.” each means the United States of America.

“Wholly-Owned Subsidiary” means any Person in which (other than directors’ qualifying shares required by law) 100% of the capital stock or other ownership interests of each class having ordinary voting power, and 100% of the capital stock or other ownership interests of every other class, in each case, 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.

1.2. Other Interpretive Provisions.

(a) Defined Terms.

Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(b) The Agreement.

The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall 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) Certain Common Terms.

(i) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(ii) The term “including” means “including without limitation” and the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by an enumeration of specific matters, to matters similar to the matters specifically mentioned.

(iii) References to the “knowledge of”, “best knowledge of”, or similar terms with respect to the Company shall mean the actual knowledge of a Responsible Officer of the Company.

(d) Performance; Time .

Whenever any performance obligation hereunder shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall, unless otherwise specified herein, be made or satisfied on the next succeeding Business Day. 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.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts .

Unless otherwise expressly provided herein, references to agreements and other contractual instruments (including the Loan Documents) 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.

(f) Laws .

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.

(g) Captions .

The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(h) Independence of Provisions .

The parties acknowledge that this Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

(i) Interpretation .

This Agreement is the result of negotiations among and has been reviewed by counsel to the Administrative Agent, the Company and other parties, and is the product of all parties hereto. Accordingly, this Agreement and the other Loan Documents shall

not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent's or the Lenders' involvement in the preparation of such documents and agreements.

1.3. 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. If any changes in accounting principles from those used in the preparation of the financial statements referred to in Section 5.10 hereafter occur as a result of the promulgation of rules, regulations, pronouncements, or opinions by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions) and result in a change in the method of calculation of financial covenants, standards, or terms found in this Agreement, upon the request of the Companies or the Majority Lenders, the Company, the Administrative Agent and the Majority Lenders agree to enter into negotiations to amend such financial covenants, standards or terms so as to equitably reflect such changes with the desired result that the evaluations of the Company's financial condition shall be the same after such changes as if such changes had not been made; provided, however, that until the parties hereto have reached a definitive agreement on such amendments, the Company's financial condition shall continue to be evaluated on the same principles as those used in the preparation of the financial statements referred to in Section 5.10 prior to such change in accounting principles.

(b) References herein to "fiscal year" and "fiscal quarter" refer to such fiscal periods of the Company.

2.

ARTICLE II
THE CREDITS

2.1. Amounts and Terms of Commitments.

Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Loans to the Company (each such Loan, a "Revolving Loan") and to participate (pursuant to Section 2.15) in the Letters of Credit issued by the Issuer, from time to time on any Business Day during the period from the Closing Date to the Revolving Termination Date, in an aggregate amount not to exceed at any time outstanding the amount set forth opposite such Lender's name in Schedule 2.1 under the heading "Commitment" (such amount, as the same (a) may be reduced from time to time (in accordance with such Lender's Commitment Percentage) pursuant to Section 2.5 or (b) may be reduced from time to time, as a result of one or more assignments pursuant to Section 10.8, is hereafter referred to as such Lender's "Commitment"); provided, however, that, after giving effect to any Revolving Borrowing or issuance of any Letter of Credit, (i) the sum of the aggregate principal amount of all outstanding Revolving Loans, the aggregate outstanding amount of all Swing Line Loans and the LC Amount, shall not

exceed the Revolving Loan Maximum Amount at such time and (ii) the sum of the aggregate principal amount of all outstanding Revolving Loans of any Lender, plus such Lender's Commitment Percentage of the LC Amount, plus such Lender's Commitment Percentage of all outstanding Swing Line Loans, shall not exceed such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this subsection 2.1, prepay pursuant to Section 2.6 and reborrow pursuant to this subsection 2.1. No Lender shall be obligated to make available its Commitment Percentage of any Revolving Loans during the existence of any Event of Default or a Default.

2.2. Notes.

(a) The Revolving Loans made by each Lender shall be evidenced by a Revolving Note payable to the order of that Lender in an amount equal to its Commitment.

(b) The Loans made, and the participations in Letters of Credit and Swing Line Loans purchased, by each Lender shall be evidenced by one or more loan accounts maintained by the Administrative Agent and such Lender in the ordinary course of business. The loan accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to 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 Company hereunder (and under any Revolving Note) to pay any amount owing with respect to the Loans. In the event of a conflict between the amount in the loan account maintained by a Lender and the amount in the loan account maintained by the Administrative Agent, the amount in the loan account maintained by the Administrative Agent shall govern.

2.3. Procedure for Revolving Borrowing and Issuance of Letters of Credit.

(a) Each Revolving Borrowing and request for the issuance of a Letter of Credit shall be made upon the Company's irrevocable written notice (except in the case of requests for Base Rate Loans, which may be by telephonic request promptly followed by written notice) delivered to the Administrative Agent in accordance with Section 10.2 in the form of a Notice of Borrowing (which notice must be received by the Administrative Agent prior to 11:00 a.m. (Chicago time)) (i) two Business Days prior to the requested Revolving Borrowing date, in the case of IBOR Loans; (ii) on the requested Revolving Borrowing date, in the case of Base Rate Loans; and (iii) three Business Days prior to the requested issuance date, in the case of Letters of Credit, specifying:

(A) the amount of the Revolving Borrowing, which (except for a Revolving Borrowing deemed requested under clause (ii) of the proviso below) shall be in an aggregate minimum principal amount of One Million Dollars (\$1,000,000) or any multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof, or the amount of the Letter of Credit (which shall be in a minimum amount of One Hundred Thousand Dollars (\$100,000)), as applicable;

- (B) the requested Revolving Borrowing date or issuance date, as applicable, which shall be a Business Day;
- (C) whether the Revolving Borrowing is to be comprised of IBOR Loans or Base Rate Loans; and
- (D) with respect to IBOR Loans, the duration of the Interest Period applicable to such Loans included in such notice. If the Notice of Borrowing shall fail to specify the duration of the Interest Period for any Revolving Borrowing comprised of IBOR Loans, such Interest Period shall be three months.

provided, however, that (i) with respect to the Revolving Borrowing to be made on the Closing Date, the Notice of Borrowing shall be delivered to the Administrative Agent not later than 11:00 a.m. (Chicago time) on the Closing Date and such Revolving Borrowing will consist of Base Rate Loans only; and (ii) in the event the Lenders reimburse the Issuer pursuant to subsection 2.15(b), the Company shall be deemed to have timely requested a Revolving Borrowing comprised of Base Rate Loans in the amount of such reimbursement.

(b) Upon receipt of the Notice of Borrowing, the Administrative Agent will promptly notify each Lender thereof and of the amount of such Lender's Commitment Percentage of such Revolving Borrowing or participation in Letters of Credit.

(c) Each Lender will make the amount of its Commitment Percentage of the Revolving Borrowing available to the Administrative Agent for the account of the Company at the Administrative Agent's Payment Office by 1:00 p.m. (Chicago time) on the Revolving Borrowing date requested by the Company in funds immediately available to the Administrative Agent. The proceeds of all such Loans will then be made available to the Company by the Administrative Agent, at the option of the Company, either (i) at the Administrative Agent's office by crediting the operating account of the Company on the books of BOA, or (ii) by wire transfer in accordance with written instructions provided to the Administrative Agent by the Company, in each case with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent.

(d) During the existence of a Default or an Event of Default, the Company may not elect to have a Loan be made as, or converted into or continued as, an IBOR Loan.

(e) After giving effect to any Revolving Borrowing, there shall not be more than eight different Interest Periods in effect.

(f) Each Letter of Credit shall be in form and substance acceptable to the Administrative Agent and the Issuer and shall by its terms be stated to expire on a date no later than the earlier of (i) the Revolving Termination Date and (ii) one year from the date of issuance. Each Notice of Borrowing requesting the issuance of a Letter of Credit shall be

accompanied by a letter of credit application, in form and substance reasonably acceptable to the Administrative Agent and the Issuer, duly executed by a Responsible Officer. The aggregate undrawn face amount of all Letters of Credit outstanding at any time shall not exceed Ten Million Dollars (\$10,000,000) (the "Letter of Credit Sublimit").

(g) Prior to the Closing Date, BOA issued the letters of credit listed on Schedule 2.3 (the "Existing Letters of Credit") pursuant to the certain Amended and Restated Credit Agreement among Bank of America, NA, as Administrative Agent, LaSalle Bank National Association, as Co-Syndication Agent, Fleet National Bank, as Co-Syndication Agent, certain financial institutions party thereto and the Company (the "Existing Credit Agreement"). Each Agent, each Lender and the Company hereby agree that each Existing Letter of Credit shall be deemed to be a Letter of Credit issued by Issuer under this Agreement on the Closing Date for the account of the Company.

2.4. Conversion and Continuation Elections.

(a) The Company may upon irrevocable written notice to the Administrative Agent in accordance with subsection 2.4 (b):

(i) elect to convert on any Business Day, any Base Rate Loans other than a Swing Line Loan (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof) into IBOR Loans; or

(ii) elect to convert on any Business Day, any Base Rate Loan that is a Swing Line Loan (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), into Optional Floating Rate Loans, or

(iii) elect to convert on any Business Day, any Optional Floating Rate Loans (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), into Base Rate Loans or, upon conversion of any Optional Floating Rate Loans into Revolving Loans, into IBOR Loans; or

(iv) elect to convert on the last day of the applicable Interest Period any IBOR Loans having Interest Periods maturing on such day (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof) into Base Rate Loans; or

(v) elect to continue on the last day of the applicable Interest Period any IBOR Loans having Interest Periods maturing on such day (or any part thereof in an amount not less than One Million Dollars (\$1,000,000), or that is in an integral multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof);

provided, that (A) if the aggregate amount of IBOR Loans in respect of any Revolving Borrowing shall have been reduced, by payment, prepayment, or conversion of part thereof to be less than One Million Dollars (\$1,000,000), such IBOR Loans shall automatically convert (on the last day of the applicable Interest Period) 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, IBOR Loans, as the case may be, shall terminate or (B) upon financing of a Swing Line Loan that is an Optional Floating Rate Loan with a Revolving Loan Borrowing as provided in subsection 2.16(c), such Optional Floating Rate Loan shall automatically convert into a Base Rate Loan unless the Company has provided a timely Notice of Conversion/Continuation converting such Optional Floating Rate Loan into an IBOR Loan.

(b) The Company shall deliver a Notice of Conversion/Continuation in accordance with Section 10.2 to be received by the Administrative Agent not later than 11:00 a.m. (Chicago time) at least (i) two Business Days in advance of the Conversion Date or continuation date, if the Loans are to be converted into or continued as IBOR Loans; and (ii) on the Conversion Date, if the Loans are to be converted into Base Rate Loans or Optional Floating Rate Loans; specifying:

- (A) the proposed Conversion Date or continuation date;
- (B) the aggregate amount of Loans to be converted or continued;
- (C) the nature of the proposed conversion or continuation; and
- (D) in the case of Loans to be continued as or converted into IBOR Loans, the duration of the requested Interest Period.

(c) If upon the expiration of any Interest Period applicable to IBOR Loans, the Company has failed to timely select a new Interest Period to be applicable to such IBOR Loans, as the case may be, or if any Default or Event of Default shall then exist, the Company shall be deemed to have elected to convert such IBOR Loans into Base Rate Loans effective as of the expiration date of such current Interest Period.

(d) Upon receipt of a Notice of Conversion/Continuation, the Administrative Agent will promptly notify each Lender thereof, or, if no timely notice is provided by the Company, the Administrative Agent will promptly notify each Lender of the details of any automatic conversion. All conversions and continuations shall be made pro rata according to the respective outstanding principal amounts of the Loans, with respect to which the notice was given, held by each Lender.

(e) During the existence of a Default or Event of Default, the Company may not elect to have a Loan converted into or continued as an IBOR Loan.

(f) Notwithstanding any other provision contained in this Agreement, after giving effect to any conversion or continuation of any Loans, there shall not be more than eight different Interest Periods in effect.

2.5. Voluntary Termination or Reduction of Commitments .

The Company may, upon not less than five Business Days' prior notice to the Administrative Agent, terminate the Aggregate Commitment or permanently reduce the Aggregate Commitment (pro rata based on the Lenders' respective Commitment Percentages) by an aggregate minimum amount of One Million Five Hundred Thousand Dollars (\$1,500,000) or any multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof; provided, that: (i) no such reduction or termination shall be permitted if, after giving effect thereto and to any prepayments of the Loans made on the effective date thereof, the sum of the then outstanding principal amount of the Revolving Loans, the outstanding principal amount of the Swing Line Loans and the LC Amount would exceed the Aggregate Commitment then in effect; (ii) that once reduced in accordance with this Section 2.5, the Aggregate Commitment may not be increased; and (iii) if, after giving effect to any reduction of the Aggregate Commitment, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitment, such Sublimit shall be automatically reduced by the amount of such excess. Any reduction of the Aggregate Commitment shall be applied to each Lender's Commitment in accordance with such Lender's Commitment Percentage. All accrued non-use fees to, but not including the effective date of any reduction or termination of the Aggregate Commitment, shall be paid on the effective date of such reduction or termination.

2.6. Optional Prepayments .

(a) Subject to Section 3.4, the Company may, at any time or from time to time, upon at least two Business Days' notice in the case of IBOR Loans, or upon same day notice in the case of Base Rate Loans and Optional Floating Rate Loans, to the Administrative Agent, ratably, in accordance with each Lender's Commitment Percentage, prepay Revolving Loans in whole or in part, (i) in the case of Revolving Loans which are IBOR Loans, in minimum amounts of Five Hundred Thousand Dollars (\$500,000) or any multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof, and (ii) in the case of Revolving Loans or Swing Line Loans which are Base Rate Loans, in any amount, (iii) in the case of Swing Line Loans which are Optional Floating Rate Loans, in any amount. Each notice of prepayment shall specify the date and amount of such prepayment, and whether such prepayment is of Base Rate Loans, IBOR Loans or Optional Floating Rate Loans, or any combination thereof and if such prepayment includes a prepayment of IBOR Loans, the Interest Periods of the Loans to be prepaid. Such notice shall not thereafter be revocable by the Company and the Administrative Agent will promptly notify each Lender thereof and of such Lender's Commitment Percentage of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to each such date on the amount prepaid and any amounts required pursuant to Section 3.4. Any prepayments by the Company pursuant to this Section 2.6 shall be applied to the Loans as

specified in the Company's notice of prepayment. If the Company shall have failed to specify in its notice of prepayment the Loans to which such prepayment is to be applied, any prepayments by the Company pursuant to this Section 2.6 shall be applied first to any Optional Floating Rate Loans then outstanding, then to any Base Rate Loans then outstanding and last to IBOR Loans with the shortest Interest Periods remaining. Amounts applied to the Revolving Loans pursuant to this Section 2.6 shall not permanently reduce or terminate the Commitments or the Aggregate Commitment, unless otherwise specified by the Company in its notice of prepayment and, in the case of a reduction only if such reduction is permitted under Section 2.5.

(b) The Company may, at any time or from time to time, upon same day notice to the Administrative Agent, prepay Swing Line Loans in whole or in part, in minimum amounts of One Hundred Thousand Dollars (\$100,000) or any multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof. Each notice of prepayment shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to each such date on the amount prepaid.

2.7. Mandatory Prepayments of Loans for Asset Dispositions and Events of Loss.

If the Company or any of its Subsidiaries shall at any time or from time to time make or agree to make a Disposition or shall suffer an Event of Loss in an amount in excess of \$1,000,000, then the Company shall promptly notify the Administrative Agent of such proposed Disposition or Event of Loss (including the amount of the estimated gross proceeds thereof and the amount of the Net Proceeds thereof to be received by the Company or its Subsidiary in respect thereof). So long as no Default or Event of Default has occurred and is continuing, proceeds of Dispositions and Events of Loss shall be used by the Company to replace the subject Property with an economical unit of substantially similar character and value as the subject Property within 180 days after its Disposition or the applicable Event of Loss; provided, that if such proceeds are not so used, the applicable amount shall be applied to reduce the outstanding principal balance of the Revolving Loans (but shall not permanently reduce the Aggregate Commitment). Notwithstanding the foregoing, during the existence of a Event of Default (including any Event of Default caused by the consummation of a Disposition that does not comply with Section 7.2), all such amounts shall be applied to the Obligations in such order and manner as all of the Lenders shall elect.

2.8. Repayment.

The Commitments hereunder shall terminate on the earlier to occur of (i) the date on which the Commitments are terminated pursuant to subsection 8.2(a), (ii) such date as is determined by the Company pursuant to Section 2.5, and (iii) February 17, 2007. The date of termination of the Commitments as provided in the immediately preceding sentence is referred to herein as the "Revolving Termination Date." On the Revolving Termination Date, the Company shall repay to the Administrative Agent in full the

aggregate principal amount of the Swing Line Loans, to the Administrative Agent and the Lenders in full the aggregate principal amount of the Revolving Loans and to the Administrative Agent reimbursement obligations with respect to Letters of Credit then outstanding. In the event any Letters of Credit are outstanding on the Revolving Termination Date, the Company shall provide to the Administrative Agent cash collateral in the amount of such Letters of Credit to secure the Company's reimbursement obligations with respect to such Letters of Credit, together with reasonably anticipated related fees, costs and expenses, which cash collateral shall be maintained in a Collateral Account.

2.9. Interest.

(a) Subject to subsection 2.9(d), each Loan shall bear interest on the outstanding principal amount thereof from the date when made to the date such Loan is repaid (i) for each day during which such Loan is an IBOR Loan, at IBOR for the applicable Interest Period for such Loan for such day, (ii) for each day during which such Loan is a Base Rate Loan, at the Alternate Base Rate for such day; and (iii) for each day during which such Loan is an Optional Floating Rate Loan, at the Optional Floating Rate for such day; plus, in each case, the Applicable Margin then in effect. Swing Line Loans shall be either Optional Floating Rate Loans or Base Rate Loans; all other Loans shall be either IBOR Loans or Base Rate Loans.

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date with respect to such Loan. Interest on each Loan shall also be paid on the date of payment (including prepayment) in full thereof and interest on IBOR Loans only shall also be paid on the date of any prepayment of such IBOR Loans pursuant to Sections 2.6 and 2.7 for the portion of the IBOR Loans so prepaid. During the existence of any Event of Default, interest shall be paid on demand of the Administrative Agent at the request or with the consent of the Majority Lenders.

(c) While any Event of Default exists or after acceleration, the Company shall pay interest on the principal amount of (i) all outstanding Loans, at a rate per annum which is determined by adding 200 basis points to the interest rate otherwise applicable to such Loans and (ii) all reimbursement obligations of the Company under subsection 2.15(b) due and unpaid, at the rate per annum which is determined by adding 200 basis points to the interest rate otherwise applicable to Revolving Loans comprised of Base Rate Loans.

(d) Anything herein to the contrary notwithstanding, the obligations of the Company 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 the respective Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event the Company shall pay such Lender interest at the highest rate permitted by applicable law.

2.10. Fees.

(a) Fee Letter.

The Company shall pay to the Administrative Agent for its own account certain fees in the amounts and at the times set forth in a certain letter agreement between the Company and the Administrative Agent of even date herewith (the "Fee Letter").

(b) Non- Use Fee.

The Company shall pay to the Administrative Agent for the account of each Lender, a non-use fee on the average daily unused portion of such Lender's 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 Administrative Agent, equal to the Applicable Margin for Non-Use Fees. Such non-use fee shall accrue from Closing Date to the Revolving Termination Date and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December commencing on March 31, 2004 through the Revolving Termination Date, with the final payment to be made on the Revolving Termination Date. The Company acknowledges that Swing Line Loans outstanding from time to time shall not be considered Revolving Loans for purposes of calculating the non-use fee.

(c) Letter of Credit Fees.

The Company shall pay to the Administrative Agent for the account of the Lenders a Letter of Credit fee on the average daily outstanding Letters of Credit issued for the account of the Company, computed on a quarterly basis in arrears on the last Business Day of each calendar quarter based on the daily utilization for that quarter as calculated by the Administrative Agent, at a per annum rate equal to the Applicable Margin at such time for IBOR Loans. Such Letter of Credit fees shall accrue from the date a Letter of Credit is issued to the date such Letter of Credit is terminated and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December commencing on March 31, 2004. The Company further agrees to pay the Issuer for the sole account of the Issuer (i) with respect to standby Letters of Credit, all costs and expenses incurred by the Issuer in connection with such Letter of Credit, and (ii) with respect to documentary Letters of Credit, all customary charges, fees, costs and expenses of the Issuer at such times as the Issuer customarily charges such charges, fees, costs and expenses.

(d) Upfront Fee.

On the Closing Date, the Company shall pay to the Administrative Agent for the account of the Lenders, an upfront fee in an aggregate amount derived by multiplying 0.15% by the Aggregate Commitment. Such upfront fee is for the credit facilities committed by the Lenders under this Agreement. The upfront fee paid to each Lender is solely for its own account and is nonrefundable for any reason whatsoever.

2.11. Computation of Fees and Interest.

(a) All computations of interest in respect of Base Rate Loans and Optional Floating Rate Loans and all computations of fees under this Agreement shall be made on the basis of a 365 or 366-day year, as appropriate, and actual days elapsed; all computations of interest in respect of IBOR Loans under this Agreement 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 or 366-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) The Administrative Agent will, with reasonable promptness, notify the Company and the Lenders of each determination of IBOR; provided, that any failure to do so shall not relieve the Company of any liability hereunder or provide the basis for any claim against the Administrative Agent. Any change in the interest rate on a Loan resulting from a change in the Applicable Margin or Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change in the Applicable Margin or Eurodollar Reserve Percentage becomes effective. The Administrative Agent will with reasonable promptness notify the Company and the Lenders of the effective date and the amount of each such change; provided, that any failure to do so shall not relieve the Company of any liability hereunder or provide the basis for any claim against the Administrative Agent.

(c) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on the Company and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of the Company or any Lender, deliver to the Company or the Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate.

(d) If the Reference Bank's Commitment shall terminate (otherwise than on termination of all the Commitments), or for any reason whatsoever the Reference Bank shall cease to be a Lender hereunder, the Reference Bank shall thereupon cease to be the Reference Bank, and the IBOR shall be determined on the basis of the rates as notified by the remaining Lenders.

(e) The Reference Bank shall use its best efforts to furnish quotations of rates to the Administrative Agent as contemplated hereby. If the Reference Bank shall be unable or otherwise fails to supply such rates to the Administrative Agent upon its request, the rate of interest shall be determined on the basis of the quotations of the remaining Lenders.

2.12. Payments by the Company.

(a) All payments (including prepayments) to be made by the Company on account of principal, interest, fees and other amounts required hereunder shall be made without set-off, recoupment or counterclaim; shall, except as otherwise expressly provided herein, be made to the Administrative Agent for the account of the Lenders (pro rata based on each Lender's Commitment Percentage) at the Administrative Agent's Payment Office, and shall be made in dollars and in immediately available funds, no later than 11:00 a.m. (Chicago time) on

the date specified herein. The Administrative Agent will promptly distribute to each Lender its Commitment Percentage (or other applicable share as expressly provided in the Loan Documents) of such principal, interest, fees or other amounts, in like funds as received. Any payment which is received by the Administrative Agent later than 11:00 a.m. (Chicago time) shall be deemed to have been received on the immediately succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be; subject to the provisions set forth in the definition of "Interest Period" herein.

(c) Unless the Administrative Agent shall have received notice from the Company prior to the date on which any payment is due hereunder that the Company will not make such payment in full as and when required hereunder, the Administrative Agent may assume that the Company has made such payment in full to the Administrative Agent on such date in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Company shall not have made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent on demand its Commitment Percentage of such amount distributed to the Lenders in excess of the amount actually received by the Administrative Agent, together with interest thereon for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate as in effect for each such day.

2.13. Payments by the Lenders to the Administrative Agent.

(a) Unless the Administrative Agent shall have received notice from a Lender on the Closing Date or, with respect to each Borrowing after the Closing Date, at least one Business Day prior to the date of any proposed Borrowing, that such Lender will not make available to the Administrative Agent as and when required hereunder for the account of the Company the amount of that Lender's Commitment Percentage of the Borrowing, the Administrative Agent may assume that each Lender has made such amount available to the Administrative Agent in immediately available funds on the Borrowing date no later than 11:00 a.m. (Chicago time) and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, make available to the Company on such date a corresponding amount. If and to the extent any Lender shall not have made its full amount available to the Administrative Agent in immediately available funds and the Administrative Agent in such circumstances has made available to the Company such amount, that such Lender shall on or before 11:00 a.m. (Chicago time) the next Business Day following the date of such Borrowing make such amount available to the Administrative Agent, together with interest at the Federal Funds Rate for and determined as of each day during such period. A notice of the Administrative Agent submitted to any Lender with respect to amounts owing under this subsection 2.13(a) shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Administrative 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 Administrative Agent on or before 11:00 a.m. (Chicago time) the next Business Day following the date of such Borrowing, the Administrative Agent shall notify the Company of such failure to fund and, upon demand by the Administrative Agent, the Company shall pay such amount to the Administrative Agent for the Administrative 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, or fund any participation in Letters of Credit or Swing Line Loans, shall not relieve any other Lender of any obligation hereunder to make a Loan on such Borrowing date or fund such participations, 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 the date of any Borrowing or to fund any such participation.

2.14. Sharing of Payments, Etc.

If, other than as expressly provided elsewhere herein, any Lender shall receive on account of the Loans made by it, or the participations in Letters of Credit or in Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Commitment Percentage of payments on account of the Loans or participations received by all the Lenders, such Lender shall forthwith (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or subparticipations in Letters of Credit or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably 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 Commitment Percentage (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. The Company agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.14 may, to the fullest extent permitted by law, exercise all of its rights of payment (including the right of set-off, but subject to Section 10.9) with respect to such participation as fully as if such Lender were the direct creditor of the Company in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.14 and will in each case notify the Lenders following any such purchases or repayments.

2.15. Certain Letter of Credit Provisions.

(a) Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby severally agrees to, have irrevocably purchased from the Issuer a

participation in such Letter of Credit and drawings thereunder in an amount equal to such Lender's Commitment Percentage of the maximum amount which is or at any time may become available to be drawn thereunder. The Issuer shall not have any obligation to issue any Letter of Credit if the Lenders have no obligation to participate in such Letter of Credit.

(b) In the event the Issuer has determined to honor a request for drawing under a Letter of Credit issued by it, the Issuer shall immediately notify the Company and the Administrative Agent, and the Company shall reimburse the Issuer on or before the Business Day immediately following the date on which such drawing is honored (such immediately following date, the "Disbursement Date") in same day funds equal to the amount of such drawing; provided, that, anything contained in this Agreement to the contrary notwithstanding, (i) unless the Company shall have notified the Administrative Agent and the Issuer prior to 11:00 a.m. (Chicago time) on the Disbursement Date that the Company intends to reimburse the Issuer for the amount of such drawing with funds other than the proceeds of Revolving Loans and the Company does so reimburse the Issuer prior to 11:00 a.m. (Chicago time) on the Disbursement Date, the Company shall be deemed to have given a timely Notice of Borrowing to the Administrative Agent requesting the Lenders to make Revolving Loans that are Base Rate Loans on the Disbursement Date in an amount equal to the amount of such drawing and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.2, the Lenders shall, on the Disbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the Issuer for the amount of such drawing; and provided, further that if for any reason proceeds of Revolving Loans are not received by the Issuer on the Disbursement Date in an amount equal to the amount of such drawing, the Company shall reimburse the Issuer, on demand, in an amount in same day funds equal to the excess of the amount of such drawing over the aggregate amount of such Revolving Loans, if any, which are so received, together with interest thereon at a rate per annum equal to the rate per annum then in effect for Base Rate Revolving Loans pursuant to Section 2.9 from the date of demand to the date of reimbursement. Nothing in this subsection 2.15(b) shall be deemed to relieve any Lender from its obligation to make Revolving Loans on the terms and conditions set forth in this Agreement, and the Company shall retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this subsection 2.15(b).

(c) In the event that the Company shall fail for any reason to reimburse the Issuer as provided in subsection 2.15(b) on the Disbursement Date in an amount equal to the amount of any drawing honored by the Issuer under a Letter of Credit issued by it, the Issuer shall promptly notify the Administrative Agent and the Administrative Agent shall promptly notify each Lender of the unreimbursed amount of such drawing and of such Lender's respective participation therein based on such Lender's Commitment Percentage. In such event, each Lender shall make available to the Issuer an amount equal to its respective participation in same day funds, at the office of the Issuer specified in such notice, not later than 11:00 a.m. (Chicago time) on the first Business Day after the date notified by the Issuer. In the event that any Lender fails to make available to the Issuer on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this subsection 2.15(c), the Issuer shall be entitled to recover such amount on demand from such Lender together with interest

thereon at the rate per annum equal to the Federal Funds Rate for and determined as of each day during such period. Nothing in this subsection 2.15(c) shall be deemed to relieve the Company from its obligation to reimburse the Issuer as provided in subsection 2.15(b). In the event the Issuer shall have been reimbursed by Lenders pursuant to this subsection 2.15(c) for all or any portion of any drawing honored by the Issuer under a Letter of Credit issued by it, the Issuer shall distribute to each Lender which has paid all amounts payable by it under this subsection 2.15(c) with respect to such drawing such Lender's Commitment Percentage of all payments subsequently received by the Issuer from the Company in reimbursement of such drawing when such payments are received. Promptly upon receipt by the Issuer of any payment of interest in respect of the Company's reimbursement obligation pursuant to subsection 2.15(b) with respect to a drawing, in the event the Issuer shall have been reimbursed by any Lender pursuant to this subsection 2.15(c) for all or any portion of such drawing, the Issuer shall distribute to such Lender which has paid all amounts payable by it under this subsection 2.15(c) with respect to such drawing such Lender's Commitment Percentage of any interest received by the Issuer in respect of that portion of such drawing so reimbursed by such Lender.

(d) The obligation of the Company to reimburse the Issuer for drawings made under the Letters of Credit issued by it and to repay any Revolving Loans made by the Lenders pursuant to subsection 2.15(b) and the obligations of the Lenders under subsection 2.15(c) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances including, without limitation, the following circumstances:

(i) any lack of validity or enforceability of any Letter of Credit;

(ii) the existence of any claim, set-off, defense or other right which the Company or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuer or other Lender or any other Person or, in the case of a Lender, against the Company, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Company or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured);

(iii) 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;

(iv) payment by the Issuer under any Letter of Credit against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit (absent the Issuer's gross negligence or willful misconduct);

(v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries;

(vi) any breach of this Agreement or any other Loan Document by any party thereto;

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or

(viii) the fact that an Event of Default or a Default shall have occurred and be continuing;

provided, however, that after paying in full its obligation hereunder, nothing herein shall adversely affect the right of the Company or such Lender, as the case may be, to commence any proceeding against the Issuer for any wrongful disbursement made by the Issuer under a Letter of Credit as a result of acts or omissions constituting gross negligence or willful misconduct on the part of the Issuer.

(e) In addition to amounts payable as provided in subsection 2.15(b), the Company hereby agrees to protect, indemnify, pay and save harmless the Issuer and its officers, employees or agents from and against any and all claims, demands, liabilities, damages, losses, and reasonable costs, charges and expenses (including reasonable fees, expenses and disbursements of counsel) which the Issuer may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by the Issuer, other than as a result of the gross negligence or willful misconduct of the Issuer or its officers, employees or agents as determined by a final judgment of a court of competent jurisdiction or (ii) the failure of the Issuer to honor a drawing under any such Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future Governmental Authority.

(f) As between the Company and the Issuer, the Company assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Issuer by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuer shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of

Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuer; and none of the above shall affect or impair, or prevent the vesting of, any of the Issuer's rights or powers hereunder.

In furtherance and extension and not in limitation of the specific provisions set forth in the first paragraph of this subsection 2.15(f), any action taken or omitted by the Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put the Issuer under any resulting liability to the Company.

Notwithstanding anything to the contrary contained in this subsection 2.15(f), the Company shall retain any and all rights it may have against the Issuer and its officers, employees or agents for any liability arising out of the gross negligence or willful misconduct of the Issuer or its officers, employees or agents.

2.16. Swing Line Loans.

(a) Subject to the terms and conditions hereinafter set forth, the Administrative Agent agrees to make loans (each such loan, a "Swing Line Loan") to the Company from time to time on any Business Day during the period from the Closing Date to the Revolving Termination Date, in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Commitment Percentage of outstanding Revolving Loans and Letters of Credit of the Administrative Agent in its capacity as a Lender, may exceed the amount of the Administrative Agent's Commitment in its capacity as a Lender; provided, however, that after giving effect to any Swing Line Loan, (i) the sum of the aggregate principal amount of all outstanding Revolving Loans, the aggregate principal amount of all outstanding Swing Line Loans and the LC Amount shall not exceed the Revolving Loan Maximum Amount, and (ii) the sum of the aggregate principal amount of all outstanding Revolving Loans of any Lender, plus such Lender's Commitment Percentage of the LC Amount, plus such Lender's Commitment Percentage of all outstanding Swing Line Loans, shall not exceed such Lender's Commitment. Each Swing Line Loan may be either a Base Rate Loan or Optional Floating Rate Loan as provided herein; provided that if neither option is selected, any applicable Swing Line Loan shall be an Optional Floating Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Administrative Agent a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Commitment Percentage multiplied by the amount of such Swing Line Loan.

(b) Each Swing Line Borrowing shall be made upon the Company's irrevocable notice to the Administrative Agent, which may be by telephonic request, promptly followed by written notice. Each such notice must be received by Agent prior to 11:00 a.m., Chicago time, on the requested Swing Line Borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, (ii) the requested Swing Line Borrowing date, which shall be a Business Day and (iii) whether the Swing Line Borrowing is to be comprised of Base Rate Loans or Optional Floating Rate Loans. Each such telephonic notice

must be confirmed promptly by delivery to the Administrative Agent of an appropriate Notice of Borrowing, appropriately completed and signed by a Responsible Officer of the Company. Unless one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Administrative Agent will, not later than 2:00 p.m., Chicago time, on the Swing Line Borrowing date specified in such Notice of Borrowing, make the amount of the Swing Line Loan available to the Company. The Lenders agree that the Administrative Agent may agree to modify the borrowing procedures used in connection with the Swing Line in its discretion and without affecting any of the obligations of the Lenders hereunder.

(c) (i) The Administrative Agent at any time in its sole and absolute discretion (including if the Administrative Agent has terminated or suspended the Swing Line as provided above) may request, on behalf of the Company (which hereby irrevocably authorizes the Administrative Agent to so request on its behalf), that each Lender make a Revolving Loan in an amount equal to such Lender's Commitment Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Notice of Borrowing for purposes hereof) and in accordance with the requirements of Section 2.3, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitment and the conditions set forth in Section 4.2. The Administrative Agent shall furnish the Company with a copy of the applicable Notice of Borrowing. Each Lender shall make an amount equal to its Commitment Percentage of the amount specified in such Notice of Borrowing available to the Administrative Agent in immediately available funds at the Administrative Agent's Payment Office not later than 1:00 p.m., Chicago time, on the day specified in such Notice of Borrowing, whereupon, subject to subsection 2.16(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount, unless the Company has elected to convert such Loan into an IBOR Loan, as provided in subsection 2.4(a)(iii), in which case such Lender shall be deemed to have made an IBOR Loan to the Company in such amount.

(i) If for any reason any Swing Line Loan cannot be financed by such a Revolving Loan Borrowing in accordance with subsection 2.16(c)(i), the request for Revolving Loans submitted by the Administrative Agent as set forth herein, shall be deemed to be a request by the Administrative Agent that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent pursuant to subsection 2.16(c)(i) shall be deemed to be payment in respect of such participation.

(ii) If any Lender fails to make available to the Administrative Agent any amount required to be paid by such Lender pursuant to the foregoing provisions of this subsection 2.16(c) by the time specified in subsection 2.16(c)(i), the Administrative Agent shall be entitled to recover

from such Lender, on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Administrative Agent at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iii) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this subsection 2.16(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Administrative Agent, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swing Line Loans, together with interest as provided herein.

(d) (i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Administrative Agent receives any payment on account of such Swing Line Loan, the Administrative Agent will distribute to such Lender its Commitment Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Administrative Agent.

(i) If any payment received by the Administrative Agent in respect of principal or interest on any Swing Line Loan is required to be returned by the Administrative Agent under any of the circumstances described in Section 10.6 (including pursuant to any settlement entered into by the Administrative Agent in its discretion), each Lender shall pay to the Administrative Agent its Commitment Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate.

(e) The Administrative Agent shall be responsible for invoicing the Company for interest on the Swing Line Loans. Until each Lender funds its Revolving Loan or risk participation pursuant to this Section 2.16 to refinance such Lender's Commitment Percentage of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Administrative Agent.

2.17. Aggregate Commitment Increase Option .

The Company shall have the right hereafter to notify the Administrative Agent and the Lenders in writing that it wishes to increase (an "Increase") the Aggregate Commitment by an aggregate amount of up to \$25,000,000, in increments of not less than \$10,000,000. Each such Increase shall become effective at the date specified in such written notice, but in any event not less than 20 days after the date such notice is received by the Administrative Agent, so long as (a) no Default or Event of Default is in existence on such date and (b) either (i) the then-existing Lenders agree to increase their Commitments by the aggregate amount of such Increase, (ii) other third party financial institutions reasonably acceptable to the Administrative Agent and the Company ("New Lenders") agree to provide new Commitments in the aggregate amount of such Increase or (iii) a combination of then-existing Lenders and New Lenders agree to provide the aggregate amount of such Increase by increasing their Commitments or providing new Commitments, as applicable. The then-existing Lenders shall have the first right of refusal to provide such Increase for a period of 10 days after receipt by the Administrative Agent of the written notice described above. In the event of over-subscription, the pro rata shares of each such Person in the increase shall be determined by the Administrative Agent. Any Increase or portion of an Increase provided by then-existing Lenders shall be effected by an amendment to this Agreement; the addition of new Commitments by New Lenders shall be effected by an amendment to this Agreement and an assignment from BOA in the manner provided in Section 10.8. In each case, the Company will issue to each affected Lender new Revolving Notes as provided in subsection 10.8(c). Any Increase in the Aggregate Commitment shall also constitute an increase in the Revolving Loan Maximum Amount by a like amount.

3.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.1. Taxes .

(a) Subject to subsection 3.1(g), any and all payments by the Company to each Lender or any Agent under this Agreement shall be made free and clear of, and without deduction or withholding for, any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and each Agent, such taxes (including income taxes or franchise taxes) as are imposed on or measured by each Lender's and each Agent's taxable income by the jurisdiction under the laws of which such Lender or such Agent, as the case may be, is organized or maintains a Lending Office or any political subdivision thereof or any jurisdiction of which it is a political subdivision (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes").

(b) In addition, the Company shall pay any present or future stamp 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 or registration of, or otherwise with respect to, this Agreement or any other Loan Documents (hereinafter referred to as “Other Taxes”).

(c) Subject to subsection 3.1(g), the Company shall indemnify and hold harmless each Lender and each Agent for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 3.1) paid by such Lender or such Agent and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within 30 days from the date such Lender or such Agent makes written demand therefor.

(d) If the Company shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to any Lender or any Agent, then, subject to subsection 3.1(g):

(i) the sum payable shall be increased as necessary so that after making all required deductions of Taxes or Other Taxes (including deductions of Taxes or other Taxes applicable to additional sums payable under this Section 3.1) such Lender or such Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made;

(ii) the Company shall make such deductions, and

(iii) the Company shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(e) Within 30 days after the date of any payment by the Company of Taxes or Other Taxes, the Company shall furnish to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Administrative Agent.

(f) Each Lender which is a foreign person (i.e., a person other than a United States person for United States Federal income tax purposes) agrees that:

(i) it shall, no later than the Closing Date (or, in the case of a Lender which becomes a party hereto pursuant to Section 10.8 after the Closing Date, the date upon which the Lender becomes a party hereto) deliver to the Company through the Administrative Agent two accurate and complete signed originals of Internal Revenue Service Form W-8BEN or any successor thereto (“Form W-8BEN”), or two accurate and complete signed originals of Internal Revenue Service Form W-8ECI or any successor thereto (“Form W-8ECI”), as appropriate, in each case indicating that the Lender is on the date of delivery thereof entitled to receive payments of principal, interest and fees

under this Agreement free from withholding of United States Federal income tax;

(ii) if at any time the Lender makes any changes necessitating a new Form W-8BEN or Form W-8ECI, it shall with reasonable promptness deliver to the Company through the Administrative Agent in replacement for, or in addition to, the forms previously delivered by it hereunder, two accurate and complete signed originals of Form W-8BEN; or two accurate and complete signed originals of Form W-8ECI, as appropriate, in each case indicating that the Lender is on the date of delivery thereof entitled to receive payments of principal, interest and fees under this Agreement free from withholding of United States Federal income tax;

(iii) it shall, before or promptly after the occurrence of any event (including the passing of time but excluding any event mentioned in (ii) above) requiring a change in or renewal of the most recent Form W-8BEN or Form W-8ECI previously delivered by such Lender and deliver to the Company through the Administrative Agent two accurate and complete original signed copies of Form W-8BEN or Form W-8ECI in replacement for the forms previously delivered by the Lender; and

(iv) it shall, promptly upon the Company's or the Administrative Agent's reasonable request to that effect, deliver to the Company or the Administrative Agent (as the case may be) such other forms or similar documentation as may be required from time to time by any applicable law, treaty, rule or regulation in order to establish such Lender's tax status for withholding purposes.

(g) The Company will not be required to pay any additional amounts in respect of United States Federal income tax pursuant to subsection 3.1(d) to any Lender for the account of any Lending Office of such Lender:

(i) if the obligation to pay such additional amounts would not have arisen but for a failure by such Lender to comply with its obligations under subsection 3.1(f);

(ii) if such Lender shall have delivered to the Company a Form W-8BEN in respect of such Lending Office pursuant to subsection 3.1(f), and such Lender shall not at any time be entitled to exemption from deduction or withholding of United States Federal income tax in respect of payments by the Company hereunder for the account of such Lending Office for any reason other than a change in United States law or regulations or in the official interpretation of such law or regulations by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) after the date of delivery of such Form W-8BEN; or

(iii) if the Lender shall have delivered to the Company a Form W-8ECI in respect of such Lending Office pursuant to subsection 3.1(f), and such Lender shall not at any time be entitled to exemption from deduction or withholding of United States Federal income tax in respect of payments by the Company hereunder for the account of such Lending Office for any reason other than a change in United States law or regulations or any applicable tax treaty or regulations or in the official interpretation of any such law, treaty or regulations by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) after the date of delivery of such Form W-8ECI.

(h) If, at any time, the Company requests any Lender to deliver any forms or other documentation pursuant to subsection 3.1(f)(iv), then the Company shall, on demand of such Lender through the Administrative Agent, reimburse such Lender for any costs and expenses (including Attorney Costs) reasonably incurred by such Lender in the preparation or delivery of such forms or other documentation.

(i) If the Company is required to pay additional amounts to any Lender or any Agent pursuant to subsection 3.1(d), then such Lender shall use its reasonable best efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its Lending Office so as to eliminate any such additional payment by the Company which may thereafter accrue if such change in the judgment of such Lender is not otherwise disadvantageous to such Lender.

3.2. Illegality.

(a) If any Lender shall determine that the introduction of any Requirement of Law, or any change in any Requirement of Law or in the interpretation or administration thereof, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make IBOR Loans, then, on notice thereof by the Lender to the Company through the Administrative Agent, the obligation of that Lender to make IBOR Loans shall be suspended until the Lender shall have notified the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exists.

(b) If a Lender shall determine that it is unlawful to maintain any IBOR Loan, the Company shall prepay in full all IBOR Loans of that Lender then outstanding, together with interest accrued thereon, either on the last day of the Interest Period thereof if the Lender may lawfully continue to maintain such IBOR Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such IBOR Loans, together with any amounts required to be paid in connection therewith pursuant to Section 3.4.

(c) Before giving any notice to the Administrative Agent pursuant to this Section 3.2, the affected Lender shall designate a different Lending Office with respect to its IBOR 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.

3.3. Increased Costs and Reduction of Return.

(a) If any Lender shall determine that, due to either (i) the introduction after the Closing Date of, or any change in or in the interpretation of, any law or regulation or (ii) the compliance with any guideline or request issued after the Closing Date by 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 IBOR Loans (other than any change by way of imposition of or increase in reserve requirements included in the calculation of the IBOR Rate), then the Company shall be liable for, and shall from time to time, upon demand therefor by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative 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 after the Closing Date of any Capital Adequacy Regulation, (ii) any change after the Closing Date in any Capital Adequacy Regulation, (iii) any change after the Closing Date 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, or (iv) compliance by the Lender (or its Lending Office) or any corporation controlling the Lender, with any Capital Adequacy Regulation issued after the Closing Date; 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 required capital is increased as a consequence of its Commitment, loans, credits or obligations under this Agreement, then, upon demand of such Lender (with a copy to the Administrative Agent), the Company shall upon demand pay to the Lender, from time to time as specified by the Lender, additional amounts sufficient to compensate the Lender for such increase.

3.4. Funding Losses.

The Company agrees to reimburse each Lender and to hold each Lender harmless from any loss or expense which the Lender may sustain or incur as a consequence of:

(a) the failure of the Company to borrow an IBOR Loan, or to continue or convert a Loan as or into an IBOR Loan, in any case after the Company has given (or is deemed to have given) a Notice of Borrowing or a Notice of Conversion/ Continuation;

(b) the failure of the Company to make any prepayment of an IBOR Loan after the Company has given a notice in accordance with Section 2.6;

(c) the prepayment (including pursuant to Section 2.7) of an IBOR Loan on a day which is not the last day of the Interest Period with respect thereto; or

(d) the conversion pursuant to Section 2.4 of any IBOR Loan to a Base Rate Loan on a day that is not the last day of the respective Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its IBOR Loans hereunder or from fees payable to terminate the deposits from which such funds were obtained. Solely for purposes of calculating amounts payable by the Company to the Lenders under this Section 3.4 and under subsection 3.3(a), each IBOR 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 IBOR for such IBOR 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 IBOR Loan is in fact so funded.

3.5. Inability to Determine Rates.

If the Administrative Agent shall have determined that for any reason adequate and reasonable means do not exist for ascertaining the IBOR for any requested Interest Period with respect to a proposed IBOR Loan or that the IBOR applicable pursuant to Section 2.9 for any requested Interest Period with respect to a proposed IBOR Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will forthwith give notice of such determination to the Company and each Lender. Thereafter, the obligation of the Lenders to make or maintain future IBOR Loans, as the case may be, hereunder shall be suspended until the Administrative 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, without giving rise to a reimbursement obligation under Section 3.4. If the Company does not revoke such notice, 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 IBOR Loans, as the case may be.

3.6. Certificates of the Lenders.

Any Lender or Agent claiming reimbursement or compensation pursuant to this Article III shall deliver to the Company (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to the Lender hereunder and such certificate shall be conclusive and binding on the Company in the absence of manifest error.

3.7. Replacement of Certain Lenders.

If a Lender shall have (a) made a claim against the Company under Section 3.1 or 3.3 or (b) suspended its obligations to make IBOR Loans under subsection 3.2(a),

the Company may make written demand on the affected Lender (with a copy to the Administrative Agent) to assign, and such affected Lender shall assign, pursuant to one or more duly executed Assignment and Acceptances within five Business Days after the date of such demand, to one or more Assignees to whom the Administrative Agent has consented (which consent shall not be unreasonably withheld), all of such affected Lender's rights and obligations under this Agreement (including without limitation such affected Lender's Commitment and all Loans owing to it), in accordance with the terms of Section 10.8 hereof; provided, that the Administrative Agent shall have no duty to locate an acceptable Assignee for the purposes of accepting such assignment. The Administrative Agent is hereby irrevocably authorized to execute one or more Assignment and Acceptances as attorney-in-fact for any affected Lender which fails to or refuses to execute and deliver the same in a timely manner. Each affected Lender shall be entitled to receive, in cash and concurrently with the execution and delivery of the applicable Assignment and Acceptances, all amounts owed to such affected Lender hereunder and under any of the other Loan Documents, including accrued interest and fees through the date of such assignment.

3.8. Survival.

The agreements and obligations of the Company in this Article III shall survive the payment of all other Obligations.

4.

ARTICLE IV
CONDITIONS PRECEDENT

4.1. Conditions of Initial Loans.

The obligation of each Lender party to this Agreement on the Closing Date to make its initial Loan hereunder is subject to the condition that the Administrative Agent shall have received on or before the Closing Date all of the following, in form and substance satisfactory to each Agent and each Lender and in sufficient copies for each Lender:

(a) Credit Agreement and Revolving Notes.

This Agreement executed by the Company, each Agent and each of the Lenders, and the Revolving Notes executed by the Company;

(b) Resolutions ; Incumbency.

(i) Copies of the resolutions of the board of directors of the Company approving and authorizing the execution, delivery and performance by the Company of this Agreement and the other Loan Documents to be delivered hereunder, and authorizing the borrowing of the Loans, certified as

of the Closing Date by the Secretary or an Assistant Secretary of the Company;

(ii) Copies of the resolutions of the board of directors of each Loan Party other than the Company approving and authorizing the execution, delivery and performance by it of the Loan Documents to be delivered by it hereunder, certified as of the Closing Date by the Secretary or an Assistant Secretary of such Loan Party; and

(iii) A certificate of the Secretary or Assistant Secretary of the Company, and each other Loan Party, certifying the names and true signatures of the officers of the Company and such Loan Party authorized to execute, deliver and perform, as applicable, the Loan Documents to be delivered by it hereunder;

(c) Articles of Incorporation ; By-laws and Good Standing .

Each of the following documents:

(i) the articles or certificate of incorporation or other similar organizational documents of the Company and each other Loan Party as in effect on the Closing Date, certified by the Secretary of State (or similar, applicable Governmental Authority) of the state of incorporation, organization or formation of the Company or such Loan Party, as the case may be, as of a recent date and by the Secretary or Assistant Secretary of the Company or such Loan Party, as the case may be, as of the Closing Date, and the bylaws or similar documents of the Company and such Loan Party as in effect on the Closing Date, certified by the Secretary or Assistant Secretary of the Company or such Loan Party, as the case may be, as of the Closing Date; and

(ii) a good standing certificate for the Company and each other Loan Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation and each state where it is qualified to do business as a foreign corporation, partnership or other business entity as of a recent date;

(d) Loan Party Guaranties .

The Loan Party Guaranties, executed by each Subsidiary of the Company;

(e) Lien Searches .

Written advice relating to such Lien and judgment searches as the Administrative Agent shall have requested of the Loan Parties, and such termination statements or other documents as may be necessary to confirm that the Property of the Loan Parties is subject to no Liens in favor of any Persons (other than Permitted Liens);

(f) Insurance .

Evidence of the existence and coverage levels of all policies of casualty, liability and business interruption insurance covering the assets of the Company and its Subsidiaries, as required by this Agreement;

(g) Legal Opinions .

Opinions of Victor Casini, general counsel to the Company and each other Loan Party, and Bell, Boyd & Lloyd LLC, special counsel to the Company and each other Loan Party, each addressed to the Agents and the Lenders, substantially in the form of Exhibit G ;

(h) Payment of Fees .

The Company shall have paid all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Closing Date, together with Attorney Costs of the Administrative Agent to the extent invoiced prior to or on the Closing Date, together with such additional amounts of Attorney Costs as shall constitute the reasonable estimate of Attorney Costs of the Administrative Agent incurred or to be incurred through the closing proceedings, including any such costs, fees and expenses arising under or referenced in the Fee Letter or otherwise under Sections 2.10, 3.1 and 10.4; provided, that such estimate shall not thereafter preclude final settling of accounts between the Company and the Administrative Agent;

(i) Closing Certificate .

A certificate signed by a Responsible Officer, dated as of the Closing Date, stating that:

(i) the representations and warranties contained in Article V are true and correct in all material respects 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 initial Borrowing; and

(iii) there has occurred since September 30, 2003, no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(j) Financial Statements .

Copies of the financial statements of the Company and its Subsidiaries referred to in Section 5.10;

(k) Consents.

All consents and approvals required to be obtained from any Governmental Authority or other Person to consummate the transactions contemplated hereby;

(l) Due Diligence.

Evidence of completion to the satisfaction of the Administrative Agent of such investigations, reviews and audits with respect to the Company as the Administrative Agent or any Lender may deem appropriate;

(m) Fee Letter.

The Fee Letter executed by the Company; and

(n) Other Documents.

Such other approvals, opinions, documents or materials as any Agent or any Lender may reasonably request.

4.2. Conditions to All Borrowings and Issuance of Letters of Credit.

The obligation of each Lender to make any Loan to be made by it hereunder (including its initial Loan), to continue or convert any Loan pursuant to Section 2.4 and to participate in any Letter of Credit as provided in Section 2.15, is subject to the satisfaction of the following conditions precedent on the relevant borrowing, continuation or conversion or issuance date:

(a) Notice of Borrowing or Continuation/Conversion.

The Administrative Agent shall have received (with, in the case of the initial Loan only, a copy for each Lender) a Notice of Borrowing or a Notice of Continuation/Conversion, as applicable;

(b) Continuation of Representations and Warranties.

The representations and warranties made by the Company contained in Article V shall be true and correct in all material respects on and as of such borrowing, continuation or conversion or issuance date with the same effect as if made on and as of such borrowing, continuation or conversion 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 continuation or conversion or issuance.

Each Notice of Borrowing and Notice of Continuation/Conversion submitted by the Company hereunder shall constitute a representation and warranty by the Company hereunder, as of the date of each such notice or application and as of the date of each Borrowing, continuation or conversion or issuance, as applicable, that the conditions in Section 4.2 are satisfied.

5.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to each Agent and each Lender that:

5.1. Corporate Existence and Power .

The Company and each other Loan Party:

(a) is a corporation or limited partnership duly organized, validly existing and 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 (i) to own its assets and carry on its business and (ii) to execute, deliver, and perform its obligations under the Loan Documents;

(c) conducts business in its own name and does not use any tradenames, tradestyles or doing business forms, except as provided on Schedule 5.1 or as updated from time to time by notice to the Administrative Agent;

(d) is duly qualified as a foreign corporation or limited partnership, and 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, as set forth on Schedule 5.1; and

(e) is in compliance with all Requirements of Law, except as provided on Schedule 5.1 ;

except, in each case referred to in clause (c), clause (d) or clause (e), to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.2. Corporate Authorization ; No Contravention .

The execution, delivery and performance by each Loan Party of any Loan Document to which such Person is party, have been duly authorized by all necessary corporate or limited partnership action, as appropriate, 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 Contractual Obligation to which such Person is a party; or

(c) violate any Requirement of Law.

5.3. Governmental Authorization.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except for those already obtained) is necessary or required in connection with the execution, delivery, performance or enforcement of this Agreement or any other Loan Document.

5.4. Binding Effect.

Each Loan Document to which a Loan Party is a party constitutes the legal, valid and binding obligations of such Person, enforceable against such Person in accordance with its 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.

5.5. Litigation.

Except as specifically disclosed in Schedule 5.5, 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 any Loan Party or any Properties of any Loan Party which:

(a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or thereby; or

(b) if determined adversely to a Loan Party, 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 or any other Loan Document, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

5.6. No Default.

No Default or Event of Default exists or would result from the incurring of any Obligations by the Company. No Loan Party 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 Closing Date, create an Event of Default under subsection 8.1(e).

5.7. Use of Proceeds ; Margin Regulations .

The proceeds of the Loans are intended to be and shall be used solely for the purposes set forth in and permitted by Section 6.11, and are intended to be and shall be used in compliance with Section 7.7. Neither the Company nor any other Loan Party is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock.

5.8. Title to Properties .

Each Loan Party has 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 its businesses, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. No Property of any Loan Party is subject to any Liens, other than Permitted Liens.

5.9. Tax es .

Each Loan Party has filed all Federal and other material tax returns and reports required to be filed, and has paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its Properties, income or assets otherwise due and payable, except (i) where the failure to so file or pay could not reasonably be expected to have a Material Adverse Effect and (ii) those taxes, assessments, fees and other charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP and no Notice of Lien has been filed or recorded. There is no proposed tax assessment against a Loan Party which, if made, could reasonably be expected to have a Material Adverse Effect.

5.10. Financial Condition .

The Company has furnished to the Administrative Agent and the Lenders the following:

(a) The audited consolidated financial statements of financial condition of the Company and its Subsidiaries dated December 31, 2002, and the related consolidated statements of income, shareholders' equity and cash flows for the fiscal year ended on that date; and

(b) the unaudited consolidated balance sheet as of September 30, 2003 and the related unaudited consolidated statements of income, shareholders' equity and cash flows for the three-month period ended on September 30, 2003.

The foregoing financial statements (including, without limitation, the notes thereto):

- (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;
- (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and results of operations for the period covered thereby (subject to purchase accounting adjustments and, in the case of the September 30, 2003 financial statements, to normal year-end adjustments); and
- (iii) except as specifically disclosed in Schedule 5.10, reflect all material indebtedness and other liabilities, including, to the best of the Company's knowledge, all material contingent liabilities of the Company and its consolidated Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Contingent Obligations.

Since September 30, 2003, there has been no Material Adverse Effect.

5.11. Environmental Matters .

- (a) Except as specifically disclosed in Schedule 5.11, the operations of each Loan Party comply in all respects with all Environmental Laws, except such non-compliance which could not reasonably be expected to have a Material Adverse Effect.
- (b) Except as specifically disclosed in Schedule 5.11, each Loan Party has obtained all licenses, permits, authorizations and registrations required under any Environmental Law ("Environmental Permits") and necessary for its ordinary course operations, all such Environmental Permits are in good standing, and each Loan Party is in compliance with the terms and conditions of such Environmental Permits, except to the extent that the failure to obtain, maintain in good standing or comply with any such Environmental Permits could not reasonably be expected to have a Material Adverse Effect.
- (c) Except as specifically disclosed in Schedule 5.11, or as updated from time to time by notice to the Administrative Agent, no Loan Party or any Property or operations of any Loan Party, is subject to any outstanding written order from or agreement with any Governmental Authority, or subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Material.
- (d) Except as specifically disclosed in Schedule 5.11, (i) there are no Hazardous Materials or other conditions or circumstances existing with respect to any Property, or arising from operations prior to the Closing Date, of any Loan Party that could give rise to Environmental Claims that could reasonably be expected to have a Material Adverse Effect, and (ii) no Loan Party 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, to the extent that the same could reasonably be expected to have a Material Adverse Effect.

5.12. Regulated Entities .

Neither any Loan Party nor any Person controlling a Loan Party, is (a) an “Investment Company” within the meaning of the Investment Company Act of 1940; or (b) 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 Federal or state statute or regulation limiting its ability to incur Indebtedness.

5.13. No Burdensome Restrictions .

No Loan Party is a party to or bound by any Contractual Obligation, or subject to any charter, corporate or partnership restriction, or any Requirement of Law, which could reasonably be expected to have a Material Adverse Effect.

5.14. Solvency .

Each Substantial Loan Party is Solvent.

5.15. Labor Relations .

There are no strikes, lockouts or other labor disputes against any Loan Party, or, to the best of the Company’s knowledge, threatened against or affecting any Loan Party, and no significant unfair labor practice complaint is pending against any Loan Party or, to the best knowledge of the Company, threatened against any Loan Party before any Governmental Authority. Except as disclosed on Schedule 5.15 , as of the Closing Date no Loan Party (a) has any employment contracts with any of its employees; or (b) is a party to any collective bargaining agreement.

5.16. Copyrights , Patents, Trademarks and Licenses, etc .

Each Loan Party owns or is licensed or otherwise has 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 its businesses, without conflict with the rights of any other Person, all of which are set forth on Schedule 5.16 . To the best knowledge of the Company, except as specifically disclosed on Schedule 5.16 , no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon any rights held by any other Person; except as specifically disclosed on Schedule 5.5 , 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 relating to intellectual property is pending or, to the knowledge of the Company, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

5.17. Subsidiaries ; Capitalization.

As of the Closing Date, no Loan Party has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 5.17 hereto and no Loan Party has any equity investments or partnership or joint venture interests in any other corporation, partnership or other entity other than those specifically disclosed in part (b) of Schedule 5.17. The authorized capital stock of each Loan Party as of the Closing Date is as set forth on Schedule 5.17. All issued and outstanding shares of capital stock of each Loan Party are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens, and such shares were issued in compliance in all material respects with Requirements of Law concerning the issuance of securities. The capital stock of each Loan Party is owned as of the Closing Date by the stockholders in the amounts set forth on Schedule 5.17. As of the Closing Date, no shares of the capital stock of any Loan Party, other than those described above, are issued and outstanding. Except as set forth on Schedule 5.17, as of the Closing Date, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Loan Party of any shares of capital stock or other securities of any such Person.

5.18. Broker's ; Transaction Fees.

No Loan Party has any obligation to any Person in respect of any finder's, broker's or investment banker's fee in connection with the transactions contemplated hereby.

5.19. Insurance.

Schedule 5.19 is a complete and accurate summary as of the date hereof of the property and casualty insurance program carried by the Company and each other Loan Party on the date hereof. Schedule 5.19 includes, as of the Closing Date, the insurer's(s') name (s), policy number(s), expiration date(s), amount(s) of coverage, type(s) of coverage, the annual premium(s), deductibles and self-insured retention and describes any retrospective rating plan, fronting arrangement or any other self-insurance or risk assumption agreed to by the Company or any other Loan Party or imposed upon the Company and each other Loan Party by any such insurer.

5.20. Business Locations.

Schedule 5.20 sets forth (a) the chief executive office and principal place of business of each Loan Party as of the Closing Date or during the prior 12 months, (b) each location at which any Property of a Loan Party is located as of the Closing Date or during the prior 12 months, and (c) each other place of business of a Loan Party as of the Closing Date.

5.21. Full Disclosure .

None of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of any Loan Party to the Administrative Agent or the Lenders prior to the Closing 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.

5.22. ERISA Matters .

Each Pension Plan complies, and has been administered in compliance, in all material respects, with all applicable statutes and governmental rules and regulations; no Reportable Event has occurred and is continuing with respect to any Pension Plan; neither the Company nor any ERISA Affiliate has withdrawn from any Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” as defined in Section 4203 or 4205 of ERISA, respectively, with respect to which the Company or any ERISA Affiliate has any unsatisfied liability; no steps have been instituted to terminate any Pension Plan except for the 401(k) plans listed on Schedule 5.22(a), none of which has any unfunded liability; no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302 (f) of ERISA; no condition exists or event or transaction has occurred in connection with any Pension Plan or Multiemployer Plan that is reasonably likely to have a Material Adverse Effect; and neither the Company nor any ERISA Affiliate is a “contributing sponsor” as defined in Section 4001(a)(13) of ERISA of a “single-employer plan” as defined in Section 4001(a)(15) of ERISA that has two or more contributing sponsors at least two of whom are not under common control. Except as listed in Schedule 5.22(b), neither the Company nor any ERISA Affiliate, to the extent there is joint and several liability with the Company to pay such benefits, has any liability to pay any welfare benefits under any employee welfare benefit plan within the meaning of Section 3(l) of ERISA to former employees thereof or to current employees with respect to claims incurred after the termination of their employment other than as required by Section 4980B of the Code or Part 6 of Subtitle B of Title 1 of ERISA.

6.

ARTICLE VI
AFFIRMATIVE COVENANTS

The Company covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Lenders waive compliance in writing:

6.1. Financial Statements.

The Company shall deliver to the Administrative Agent in form and detail satisfactory to the Administrative Agent and the Majority Lenders, with sufficient copies for each Lender:

(a) as soon as available, but not later than 90 days after the end of each fiscal year, a copy of the audited consolidated balance sheet of the Company as at the end of such year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the opinion of Deloitte & Touche LLP or another nationally-recognized independent public accounting firm 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, except for (i) changes in GAAP resulting from the application of financial accounting standard 142 related to goodwill and (ii) changes in GAAP approved by the Administrative Agent. Such opinion shall not be qualified or limited, except for a qualification in connection with the refinancing or the repayment of the Obligations;

(b) as soon as available, but not later than 45 days after the end of each fiscal quarter of each year (or 90 days, in the case of the last fiscal quarter of each fiscal year), a copy of the unaudited consolidated balance sheet of the Company and its consolidated Subsidiaries as of the end of such 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 quarter, and certified by an appropriate Responsible Officer as being complete and correct and fairly presenting, in accordance with GAAP, the financial position and the results of operations of the Company and its Subsidiaries (subject to normal year-end adjustments and the omission of footnotes);

(c) as soon as available, but not later than 60 days after the last day of each fiscal year, an annual budget for the Company for the succeeding fiscal year, prepared on a consolidated and consolidating basis and in conformity with the financial statements furnished under the preceding clauses (a) and (b), signed by a Responsible Officer and consisting of at least a balance sheet, an income statement and a cash flow statement, each calculated on a month by month basis;

(d) within 10 days after receipt thereof by the Company, copies of any management letters or comparable letters delivered to the Company by any accountant retained by the Company; and

(e) prior to the expiration of the Company's insurance coverage, the Company shall provide new insurance certificates satisfying the requirements of Section 6.6.

6.2. Certificates ; Other Information .

The Company shall furnish to the Administrative Agent, with sufficient copies for each Lender:

(a) concurrently with the delivery of the financial statements referred to in subsection 6.1(a) above, a certificate of the independent certified public accountants reporting on such financial statements (i) 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 and (ii) which does not limit the ability of the Agents and the Lenders to rely on such financial statements;

(b) concurrently with the delivery of the financial statements referred to in subsection 6.1(b), (i) a Compliance Certificate of a Responsible Officer (A) stating that the Company, during such period, has observed and performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement to be observed, performed or satisfied by it, and that such officer has obtained no knowledge of any Default or Event of Default except as specified (by applicable subsection reference) in such certificate, and (B) showing in detail the calculations supporting such statement in respect of Sections 7.5, 7.12, 7.13, 7.14 and 7.15; and (ii) a Pricing Change Certificate of a Responsible Officer;

(c) promptly after the same are sent, copies of all financial statements and reports which the Company sends to its public shareholders; and promptly after the same are filed, copies of all financial statements and regular, periodical or special reports which the Company may make to, or file with, the SEC;

(d) promptly, such additional business, financial, corporate or partnership affairs and other information as the Administrative Agent, at the request of any Lender, may from time to time reasonably request; and

(e) within 45 days after the end of each fiscal quarter (or 90 days in the case of the last quarter of each fiscal year), a schedule of Capital Expenditures listing (i) total Capital Expenditures for the fiscal year to date, (ii) in detail, all items included in Capital Expenditures for such period and not constituting Maintenance Capital Expenditures and (iii) the total amount of Capital Expenditures for such period that are Maintenance Capital Expenditures.

6.3. Notices .

The Company shall promptly notify the Administrative Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of (i) any breach or non-performance of, or any default under, any Contractual Obligation of any Loan Party which could result in a Material Adverse Effect; and (ii) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between any Loan Party and any Governmental Authority which involves amounts in excess of \$100,000;

(c) of the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party (i) in which the amount of damages claimed is Two Million Five Hundred Thousand Dollars (\$2,500,000) or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any Loan Document;

(d) upon, but in no event later than 10 days after, any Responsible Officer becoming aware of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against any Loan Party or any Properties of any Loan Party pursuant to any applicable Environmental Laws which involves amounts in excess of \$100,000, (ii) any environmental or similar condition on any real property adjoining or in the vicinity of the property of any Loan Party that could reasonably be anticipated to cause such property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of such property under any Environmental Laws, and (iii) all other Environmental Claims involving in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000);

(e) of any other litigation or proceeding affecting any Loan Party which the Company is required to report to the SEC pursuant to the Exchange Act, within four days after reporting the same to the SEC;

(f) any Material Adverse Effect subsequent to the date of the most recent financial statements of the Company delivered to the Lenders pursuant to subsections 6.1(a), 6.1(b) or 4.1(h);

(g) of any material change in accounting policies or financial reporting practices by any Loan Party;

(h) of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving any Loan Party;

(i) any change or proposed change in any of the information set forth on Schedule 5.20, including but not limited to (i) any change in the location where any Property of a Loan Party is kept, (ii) any proposed change in the location of the Company's or any other Loan Party's chief executive office or chief place of business, and (iii) any proposed opening, closing or other change in the list of offices and other places of business of any Loan Party;

(j) any change in the name of any Loan Party; and

(k) the occurrence of a Reportable Event with respect to any Pension Plan; the filing of a notice of intent to terminate a Pension Plan by the Company or any ERISA Affiliate; the institution of proceedings to terminate a Pension Plan by the PBGC or any other Person; the withdrawal in a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 and 4205, respectively, of ERISA by the Company or any ERISA Affiliate from

any Multiemployer Plan; the failure of the Company or any ERISA Affiliate to make a required contribution to any Pension Plan, including but not limited to any failure to pay an amount sufficient to give rise to a Lien under Section 302(f) of ERISA; the taking of any action with respect to a Pension Plan which could result in the requirement that the Company or any ERISA Affiliate furnish a bond or other security to the PBGC; the occurrence of any other event with respect to any Pension Plan which could result in the incurrence by the Company or any ERISA Affiliate of any material liability, fine or penalty; or the establishment of a new plan subject to ERISA or an amendment to any existing plan which will result in a material increase in contributions or benefits under such plan or the incurrence of any material increase in the liability of the Company (or an ERISA Affiliate) with respect to any "employee welfare benefit plan" as defined in Section 3(1) of ERISA which covers former employees thereof or current employees and their beneficiaries with respect to claims incurred after the termination of their employment.

Each notice pursuant to this Section shall be accompanied by a written statement by a Responsible Officer of the Company setting forth details of the occurrence referred to therein, and stating the action the Company proposes to take with respect thereto (including the period during which such action will be taken). Each notice under subsection 6.3(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

6.4. Preservation of Corporate Existence, Etc .

The Company shall, and shall cause each of its Subsidiaries to:

- (a) Except as otherwise permitted under Section 7.3, preserve and maintain in full force and effect its corporate or partnership existence and good standing under the laws of its state or jurisdiction of incorporation or formation, as applicable; provided, that the Company may permit or cause the liquidation or sale of any Subsidiary that is not a Material Loan Party;
- (b) preserve and maintain in full force and effect all 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 7.3 and sales of assets permitted by Section 7.2; provided, that the Company may permit or cause the liquidation or sale of any Subsidiary that is not a Material Loan Party;
- (c) use its reasonable efforts, in the Ordinary Course of Business, to preserve its business organization and preserve the goodwill and business of the customers, suppliers and others having material business relations with it; and
- (d) preserve or renew all of its registered trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.5. Maintenance of Property.

The Company shall maintain, and shall cause each of its Subsidiaries 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 or as permitted by Section 7.2, Section 6.4(a) or Section 6.4(b).

6.6. Insurance.

The Company shall maintain, and shall cause each of its Subsidiaries 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 and as are reasonably acceptable to the Administrative Agent, including workers' compensation insurance, public liability and property insurance. All property, business interruption and liability insurance maintained by the Company shall name the Administrative Agent as additional insured, as its interests may appear. All such insurance policies shall provide that they may not be cancelled, amended or terminated unless the Administrative Agent is given at least the same number of days' notice that the insurance company which issued such policies is required to give the Company or any Subsidiary, but in no event less than 30 day's prior written notice. Proceeds of insurance for losses shall be used by the applicable Loan Party to repair, replace, restore or substitute the damaged Property to an economical unit of substantially the same character and value as such Property was prior to such damage, unless (a) the damaged Property can not be repaired, replaced, restored or substituted prior to the Revolving Maturity Date, or (b) the failure to be able to use such damaged Property during the period during which such damaged Property is to be repaired, replaced, restored or substituted could reasonably be expected to have a Material Adverse Effect. Notwithstanding anything contained herein to the contrary, if an Event of Default exists at the time of such Event of Loss, or the conditions in clauses (a) and (b) above are not met, the amount of proceeds with respect to such Event of Loss shall, at the request of the Majority Lenders, be promptly paid by the applicable Loan Party to the Administrative Agent for application to the Obligations as provided herein. Upon request of the Administrative Agent or any Lender, the Company shall furnish to the Administrative 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 Administrative 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 6.6 (and which, in the case of a certificate of a broker, was placed through such broker).

6.7. Payment of Obligations .

The Company shall, and shall cause its Subsidiaries to, pay and discharge as the same shall become due and payable, all their respective Indebtedness, 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;
- (b) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its Property; and
- (c) all Indebtedness, as and when due and payable, unless the same is 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 subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.8. Compliance with Laws .

The Company shall comply, and shall cause each of its Subsidiaries to comply, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act), except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.9. Inspection of Property and Books and Records .

The Company shall maintain and shall cause each of its Subsidiaries 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 Subsidiaries. The Company shall permit, and shall cause each of its Subsidiaries to permit, representatives and independent contractors of the Administrative Agent or any Lender to visit and inspect any of their respective Properties, to examine their respective corporate or partnership, 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 (at the expense of the Company with respect to all such inspections occurring during the existence of an Event of Default and with respect to one inspection per calendar year if no Event of Default is in existence) and 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 Administrative 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. The Administrative Agent and each Lender hereby agrees that in the absence of an Event of Default, no Lender will perform any such visit or inspection except in conjunction with a visit or inspection by the Administrative Agent.

6.10. Environmental Laws.

(a) The Company shall, and shall cause each of its Subsidiaries to, conduct its operations and keep and maintain its Property in compliance with all Environmental Laws, except such non-compliance as could not reasonably be expected to have a Material Adverse Effect.

(b) Upon the written request of the Administrative Agent or any Lender, the Company shall submit and cause each of its Subsidiaries to submit, to the Administrative 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 6.3(d), that could, individually or in the aggregate, result in liability in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000).

6.11. Use of Proceeds.

The Company shall use the proceeds of the Loans solely as follows: (a) to refinance existing Indebtedness of the Company under the Existing Credit Agreement, (b) to finance all or a portion of the purchase price for any Permitted Acquisition and (c) for working capital and other general corporate or partnership purposes not in contravention of any Requirement of Law.

6.12. Solvency.

The Company shall at all times be, and shall cause each Substantial Loan Party to be, Solvent.

6.13. Subsidiaries.

The Company shall promptly cause each of its Subsidiaries organized under the laws of a State in the United States or a Province of Canada, including without limitation any such Subsidiary created or acquired in connection with a Permitted Acquisition, to execute and deliver to the Administrative Agent a Loan Party Guaranty of the Obligations and such additional agreements, instruments and documents (including without limitation evidence of corporate or partnership authority) as the Administrative Agent shall reasonably request in connection therewith.

6.14. Further Assurances.

The Company shall ensure that all written information, exhibits and reports furnished to the Agents 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 Agents 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.

6.15. Depository Accounts.

The Company shall maintain all of its principal depository, cash management, operating and administrative accounts with one or more of the current Lenders or any subsequent Lenders, to the extent that a Lender is able to provide such accounts and services in a manner that is reasonably convenient from the standpoint of the Company.

7.

ARTICLE VII
NEGATIVE COVENANTS

The Company hereby covenants and agrees that, so long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, unless the Majority Lenders waive compliance in writing:

7.1. Limitation on Liens.

The Company shall not, and shall not suffer or permit any of its Subsidiaries 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 the Property of the Company or its Subsidiaries on the Closing Date and set forth in Schedule 7.1 securing Indebtedness outstanding on such date;

(b) Liens for taxes, fees, assessments or other governmental charges which are not delinquent or remain payable without penalty, or to the extent that non-payment thereof is permitted by Section 6.7; provided, that no Notice of Lien has been filed or recorded under the Code;

(c) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the Ordinary Course of Business or arising in connection with the repair, replacement, restoration or substitution of such Property permitted under Sections 2.7 and 6.6 hereof, in each case, 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;

(d) 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;

(e) Liens on the Property of the Company or any of its Subsidiaries securing (i) the non-delinquent performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, (ii) contingent obligations on surety and appeal bonds, and (iii) other non-delinquent obligations of a like nature; in each case, incurred in the Ordinary Course of Business, provided all such Liens in the aggregate could not (even if enforced) be reasonably expected to cause a Material Adverse Effect;

(f) Liens consisting of judgment or judicial attachment liens; provided, that the existence of such Liens would not constitute an Event of Default under Section 8.1(h);

(g) 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;

(h) purchase money security interests on, or Liens securing Capital Lease Obligations with respect to, any Property (other than Inventory, but including fixed assets and real Property), acquired, leased or held by the Company or its Subsidiaries in the Ordinary Course of Business, securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring or leasing such Property; provided, that (i) any such Lien attaches to such Property concurrently with or within 90 days after the acquisition or lease thereof, (ii) such Lien attaches solely to the Property so acquired or leased in such transaction, (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 such purchase money security interest or Capital Lease Obligation constitutes Indebtedness permitted under subsection 7.5(h);

(i) 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 in excess of those set forth by regulations promulgated by the Federal Reserve Board, and (ii) such deposit account is not intended by the Company or any of its Subsidiaries to provide collateral to the depository institution; and

(j) Liens securing Seller Debt incurred in connection with a Permitted Acquisition, provided, that (i) any such Lien attaches only to the Property acquired in connection with the underlying Permitted Acquisition, (ii) such Lien attaches concurrently with the acquisition of such Property, (iii) the principal amount of the Indebtedness secured thereby does not exceed 100% of the purchase price for the underlying Permitted Acquisition and

(iv) the principal amount of the Indebtedness secured by such Property constitutes Indebtedness permitted under subsection 7.5(h).

7.2. Disposition of Assets .

The Company shall not, and shall not suffer or permit any of its Subsidiaries to, directly or indirectly, sell, assign, lease, license, 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) or enter into any agreement to do any of the foregoing, except:

(a) dispositions of Inventory in the Ordinary Course of Business;

(b) the sale, transfer or other disposition of Property, so long as (i) the proceeds thereof are used or applied as provided in Sections 2.7 and 6.6, (ii) no Default or Event of Default is in existence at the time of such sale, transfer or other disposition or would be caused thereby and (iii) in the case of any individual sale, transfer or other disposition, or series of related sales, transfers, or other dispositions, that involve Property with an aggregate book value equal to or greater than 25% of Net Worth at the time of such transaction or the last of such a series of transactions, the Company shall have delivered to the Administrative Agent a certificate of a Responsible Officer demonstrating that after consummation of such transaction(s), the Company would be in compliance with the covenants contained in Sections 7.12, 7.13, 7.14 and 7.15, calculated as of the last day of the most recent calendar quarter, but showing the effect of such transaction(s) on a pro forma basis; and

(c) other dispositions permitted under this Agreement.

7.3. Consolidations and Mergers .

The Company shall not, and shall not suffer or permit any of its Subsidiaries to, merge, consolidate with or into, or acquire (whether in one transaction or in a series of transactions) substantially all of the assets of any Person, except:

(a) in connection with a Permitted Acquisition; and

(b) any Subsidiary of the Company may merge with the Company (provided , that the Company shall be the continuing or surviving corporation), or with any one or more Subsidiaries of the Company, provided , that if any transaction shall be between a Subsidiary and a Wholly-Owned Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving corporation or partnership, as applicable.

7.4. Loans and Investments .

The Company shall not purchase or acquire, or suffer or permit any of its Subsidiaries to purchase or acquire, or make any commitment for, 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 of the business of any Person, 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, except for:

- (a) acquisitions and purchases constituting a Permitted Acquisition;
- (b) investments in Cash Equivalents;
- (c) 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;
- (d) advances to employees of the Company or any Subsidiary for travel or other ordinary business expenses, provided that the aggregate amount outstanding at any one time for the Company and its Subsidiaries shall not exceed Five Hundred Thousand Dollars (\$500,000);
- (e) advances to employees of the Company or any Subsidiary for relocation expenses, provided that the aggregate amount outstanding at any one time for the Company and its Subsidiaries shall not exceed Two Million Dollars (\$2,000,000);
- (f) investments outstanding on the date hereof and listed on Schedule 7.4;
- (g) loans by the Company to its Subsidiaries in the Ordinary Course of Business; and
- (h) warrants for Securities received by the Company or any of its Subsidiaries and not purchased for cash.

7.5. Limitation on Indebtedness.

The Company shall not, and shall not suffer or permit any of its Subsidiaries 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 (including any increase pursuant to Section 2.17);
- (b) Indebtedness consisting of Contingent Obligations permitted pursuant to Section 7.8;
- (c) Indebtedness existing on the Closing Date and set forth in Schedule 7.5;
- (d) Indebtedness incurred in connection with operating leases;
- (e) intercompany Indebtedness permitted under subsection 7.4(f);
- (f) Indebtedness to insurance companies incurred in order to permit the Company or one of its Subsidiaries to repay obligations owing by such Loan Party to former

employees of such Loan Party under the Company's 401K Plus deferred compensation plan, so long as such Indebtedness is not greater than the aggregate cash surrender value of insurance policies owned by the Company and covering the lives of participants in the Company's 401K Plus deferred compensation plan;

(g) Subordinated Debt (including any Seller Debt constituting Subordinated Debt); and

(h) Capital Lease Obligations and other Indebtedness secured by Liens permitted by subsection 7.1(h), Seller Debt secured by Liens permitted by subsection 7.1(j), unsecured Seller Debt not constituting Subordinated Debt, and other Indebtedness not described in clauses (a) - (g) above (including the refinancing or replacement of Indebtedness described in clause (c) above), so long as the aggregate amount of such Indebtedness, together with that aggregate amount of all other Indebtedness then outstanding and permitted pursuant to this clause (h), does not at the time incurred exceed 10% of Net Worth at such time.

7.6. Transactions with Affiliates.

The Company shall not, and shall not suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of the Company or of any such Subsidiary, except (a) those transactions listed on Schedule 7.6, (b) as expressly permitted by this Agreement, or (c) in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of the Company or such Subsidiary, in each case described in clause (c), 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.

7.7. Use of Proceeds.

The Company shall not and shall not suffer or permit any of its Subsidiaries to use any portion of the Loan proceeds, 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.

7.8. Contingent Obligations.

The Company shall not, and shall not suffer or permit any of its Subsidiaries 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) Contingent Obligations of the Company and its Subsidiaries existing as of the Closing Date and listed in Schedule 7.8; (c) bonds in the nature of bid bonds, performance bonds, or bonds to cover extended warranties, obtained in the ordinary cause of business; (d) guaranties by the Company or any of its Subsidiaries of the operating lease obligations

of any of the Company's Subsidiaries; and (e) guaranties by the Company or any of its Subsidiaries of Indebtedness permitted pursuant to Section 7.5.

7.9. Joint Ventures.

The Company shall not, and shall not suffer or permit any of its Subsidiaries to enter into any Joint Venture, other than in the Ordinary Course of Business.

7.10. Unconditional Purchase Options.

Except as set forth on Schedule 7.10, the Company shall not enter into or be a party to, or permit any Subsidiary to enter into or be a party to, any contract for the purchase of materials, supplies or other property or services, if such contract requires that payment be made by it regardless of whether or not delivery is ever made of such materials, supplies or other property or services.

7.11. Restricted Payments.

The Company shall not, and shall not suffer or permit any of its Subsidiaries 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 Securities, or purchase, redeem or otherwise acquire for value any shares of its Securities or any warrants, rights or options to acquire such Securities, now or hereafter outstanding, or repay, prepay, purchase or redeem any Subordinated Debt; except that the Company and any Wholly-Owned Subsidiary of the Company may:

- (a) declare and make dividend payments or other distributions payable solely in its common stock;
- (b) in the case of Wholly-Owned Subsidiaries only, declare and make dividend payments or other distributions at any time to the Company or to any other Wholly-Owned Subsidiary;
- (c) 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;
- (d) repay Subordinated Debt pursuant to the terms of any subordination agreement or subordination provisions relating thereto;
- (e) so long as no Event of Default or Default is then existence or would be caused thereby, (i) redeem Securities to the extent described on Schedule 7.8 and (ii) redeem Securities issued to any employee of the Company or any of its Subsidiaries, after termination of the employment of such Person, which Securities were originally issued to such Person in connection with an Acquisition consummated by the Company prior to the Closing Date or a Permitted Acquisition consummated by the Company after the Closing Date; provided, that the

aggregate cost of such redemptions under this clause (e)(ii) in any fiscal year shall not exceed One Million Dollars (\$1,000,000); and

(f) so long as no Event of Default or Default is then in existence or would be caused thereby, declare and pay dividends in respect of its Securities in an aggregate amount not to exceed \$3,000,000 in any calendar year.

7.12. Net Worth.

The Company's Net Worth, as of the last day of any fiscal quarter commencing on March 31, 2004, shall not be less than the sum of 90% of the Company's Net Worth on the Closing Date.

7.13. Fixed Charge Coverage Ratio.

The Fixed Charge Coverage Ratio, on the last day of any fiscal quarter commencing on March 31, 2004, for the 12-month period ending on such date, shall not be less than 1.25:1.00.

7.14. Senior Fund ed Debt to EBITDA Ratio.

The Senior Funded Debt to EBITDA Ratio, on the last day of any fiscal quarter commencing on March 31, 2004, shall not exceed 2:50:1.00.

7.15. Total Fund ed Debt to EBITDA Ratio.

The Total Funded Debt to EBITDA Ratio, on the last day of any fiscal quarter commencing on March 31, 2004, shall not exceed 3.00:1.00.

7.16. Change in Business.

The Company shall not, and shall not permit any of its Subsidiaries to, engage in any material line of business substantially different from, and unrelated to, those lines of business carried on by it on the date hereof. All parties hereto agree that, for all purposes under this Agreement, the sale of after market automotive parts, and retail sales to consumers from self service facilities, shall each be deemed to be part of, or related to, the Company's line of business carried on by it on the date hereof.

7.17. Change in St ructure.

Except as expressly permitted under Section 6.4(a) and Section 7.3, the Company shall not and shall not permit any of its Subsidiaries to, make any changes in its equity capital structure (including in the terms of its outstanding stock), or amend its Organization Documents in any respect material to the Lenders.

7.18. Accounting Changes.

The Company shall not, and shall not suffer or permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of the Company or of any of its consolidated Subsidiaries.

7.19. Other Contracts.

The Company shall not, and shall not permit any of its Subsidiaries to, enter into any employment contracts or other employment or service-retention arrangements whose terms, including salaries, benefits and other compensation, are not normal and customary in the industry.

7.20. Management Fees.

The Company shall not, and shall not permit any of its Subsidiaries to, pay any management, consulting, advisory or similar fees to any Affiliate, other than those transactions listed on Schedule 7.6 and fees paid to the Company and/or any of its Subsidiaries by the Company or any of its Subsidiaries.

7.21. Subsidiaries.

Except in connection with a Permitted Acquisition, the Company shall not, and shall not permit any of its Subsidiaries to, establish, create or acquire any new Subsidiary without providing Administrative Agent at least 10 days written notice prior to the date Subsidiary has any assets.

7.22. Pension Plans.

The Company shall not permit, and not permit any of its Subsidiaries to permit, any condition to exist in connection with any Pension Plan that would constitute grounds for the PBGC to institute proceedings to have such Pension Plan terminated or a trustee appointed to administer such Pension Plan; not fail, and not permit any of its Subsidiaries to fail, to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under Section 302(f) of ERISA; and not engage in, or permit to exist or occur, or permit any of its Subsidiaries to engage in, or permit to exist or occur, any other condition, event or transaction with respect to any Pension Plan that is reasonably likely to result in a Material Adverse Effect.

7.23. Amendment of Documents.

The Company will not, and will not permit any of its Subsidiaries to, amend, modify or alter, or permit to be amended, modified or altered, any agreement, instrument or document evidencing any of the Subordinated Debt, if the effect of such amendment is to (i) increase the interest rate on such Subordinated Debt, (ii) accelerate the dates upon which payments of principal or interest are due on such Subordinated Debt, (iii) change

the payment provisions of such Subordinated Debt, (iv) change the subordination provisions thereof, if any or (v) otherwise alter the terms of such Subordinated Debt in any material respect.

8.

ARTICLE VIII
EVENTS OF DEFAULT

8.1. Event of Default.

Any of the following shall constitute an "Event of Default":

(a) Non -Payment.

The Company fails to pay, (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within 3 days after the same shall become due, any interest, fee or any other amount payable hereunder or pursuant to any other Loan Document; or

(b) Representatio n or Warranty.

Any representation or warranty by the Company or any other Loan Party made or deemed made herein, in any Loan Document, or which is contained in any certificate, document or financial or other statement by the Company, any other Loan Party, or their respective Responsible Officers, furnished at any time under this Agreement, or in or under any Loan Document, shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Specific Defa ults.

The Company fails to perform or observe any term, covenant or agreement contained in Sections 6.1, 6.2, 6.3, 6.6 and 6.9 or Article VII; or

(d) Other Defaul ts.

The Company fails to perform or observe any other term or covenant contained in this Agreement or any Loan Document, and such default shall continue unremedied for a period of 30 days after the earlier of (i) the date upon which a Responsible Officer of the Company knew or should have known of such failure or (ii) the date upon which written notice thereof is given to the Company by the Administrative Agent; or

(e) Cross -Default.

The Company or any other Loan Party (i) fails to make any payment in respect of any Indebtedness or Contingent Obligation 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 Two Million Five Hundred Thousand Dollars (\$2,500,000) 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 document relating thereto on the date of such failure; or (ii) 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 document relating thereto 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 prior to its stated maturity, or such Contingent Obligation to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency ; Voluntary Proceedings .

The Company or any other Substantial Loan Party (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) Involuntar y Proceedings .

(i) Any involuntary Insolvency Proceeding is commenced or filed against the Company or any Substantial Loan Party, 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 Substantial Loan Party'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 Substantial Loan Party 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 Substantial Loan Party 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) Monetary Judgments .

One or more judgments, non-interlocutory orders, decrees or arbitration awards shall be entered against the Company or any other Loan Party involving in the aggregate a liability (not fully covered by independent third-party insurance) as to any single or related series of transactions, incidents or conditions, of One Million Dollars

(\$1,000,000) or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of 30 days after the entry thereof; or

(i) No n-Monetary Judgments .

Any non-monetary judgment, order or decree shall be rendered against the Company or any other Loan Party which does or could reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 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

(j) Change of Control .

Any Change of Control shall occur with respect to the Parent; or

(k) Adverse Change .

There shall occur a Material Adverse Effect; or

(l) Loan Party Defaults .

A Material Loan Party (other than the Company) shall fail to perform or observe any term, covenant or agreement in any Loan Document to which it is a party and such failure shall continue unremedied for a period of 30 days after the earlier of (i) the date upon which a Responsible Officer of the Company knew or should have known of such failure or (ii) the date upon which written notice thereof is given to the Company by the Administrative Agent; or any Loan Party Guaranty shall for any reason (other than as provided or permitted in this Agreement or any other Loan Document) be partially (including with respect to future advances) or wholly revoked or invalidated, or, except in connection with a transaction permitted under this Agreement or any other Loan Document, otherwise cease to be in full force and effect, or any Loan Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder; or

(m) ERISA Liabilities .

Any of the following events shall have occurred, if such event is reasonably likely to have a Material Adverse Effect: (i) the existence of a Reportable Event, (ii) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (iii) the occurrence of an obligation to provide affected parties with a written notice of intent to terminate a Pension Plan in a distress termination under Section 4041 of ERISA, (iv) the institution by PBGC of proceedings to terminate any Pension Plan, (v) any event or condition that would require the appointment of a trustee to administer a Pension Plan, (vi) the withdrawal of the Company or any ERISA Affiliate from a Multiemployer Plan, and (vii) any event that would give rise to a Lien under Section 302(f) of ERISA.

8.2. Remedies.

If any Event of Default occurs, the Administrative Agent shall, at the request of, or may, with the consent of, the Majority Lenders,

- (a) declare the Commitment of each Lender to make Loans and to participate in Letters of Credit to be terminated, whereupon such Commitments shall forthwith be terminated;
- (b) 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 the Company; 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 subsections (f) or (g) of Section 8.1 above (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 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 any Agent or any Lender.

8.3. 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.

9.

ARTICLE IX
THE AGENTS

9.1. Appointment and Authorization.

(a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative 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 Administrative Agent.

(b) The Issuer shall act on behalf of the Lenders with respect to the Letters of Credit and the documents associated therewith until such time and except for so long as the Administrative Agent may agree at the request of the Majority Lenders to act for the Issuer with respect thereto; provided, however, that each Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article IX 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 applications and agreements for letters of credit pertaining to Letters of Credit as fully as if the term "Administrative Agent", as used in this Article IX, included the Issuer with respect to such acts or omissions, and (ii) as additionally provided in this Agreement with respect to the Issuer.

9.2. Delegation of Duties.

The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3. Liability of the Administrative Agent.

None of the Administrative Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document (except for its own gross negligence or willful misconduct), or (ii) be responsible in any manner to any of the Lenders or any other Agent for any recital, statement, representation or warranty made by the Company or any other Loan Party 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 Administrative Agent under or in connection with, this Agreement or any other Loan Document, or for the value of any Property 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 Administrative 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, any other Loan Party or the Company's Affiliates.

9.4. Reliance by the Administrative Agent.

(a) The Administrative 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 Administrative Agent. The Administrative 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 Majority 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 Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Majority 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 4.1, the Syndication Agent, the Documentation Agent, the Co-Agent and 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 Administrative Agent to such Agent or such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Agent or such Lender.

9.5. Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Lenders, unless the Administrative 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”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be requested by the Majority Lenders in accordance with Article VIII; provided, however, that unless and until the Administrative Agent shall have received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

9.6. Credit Decision.

The Syndication Agent, the Documentation Agent, the Co-Agent and each Lender expressly acknowledges that none of the Administrative Agent-Related Persons has made any representation or warranty to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Company or any other Loan Party shall be deemed to constitute any representation or warranty by the Administrative Agent to such Agent or such Lender. The Syndication Agent, the Documentation Agent, the Co-Agent and each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent 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 each other Loan Party, and all applicable bank regulatory laws relating to the transactions contemplated thereby, and made its own decision to enter into this Agreement and extend credit to the Company hereunder. The Syndication Agent, the Documentation Agent, the Co-Agent and each Lender also represents that such party will, independently and without reliance upon the Administrative Agent 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 Administrative Agent, the Administrative Agent shall not have any duty or responsibility to provide the Syndication Agent, the Documentation Agent, the Co-Agent or 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 Administrative Agent-Related Persons.

9.7. Indemnification.

Whether or not the transactions contemplated hereby shall be consummated, the Lenders shall indemnify upon demand the Administrative 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), ratably, in accordance with each such Lender's Commitment Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind whatsoever which may at any time (including at any time following the repayment of the Loans and the termination or resignation of the Administrative Agent) be imposed on, incurred by or asserted against any such Person any way relating to or arising out of this Agreement or any document contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any such Person under or in connection with any of the foregoing; provided, however, that no Lender shall be liable for the payment to the Administrative Agent-Related Persons of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments,

suits, costs, expenses or disbursements resulting solely from such Persons' gross negligence or willful misconduct. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share (in accordance with each such Lender's Commitment Percentage) of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Company. Without limiting the generality of the foregoing, if the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative 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 Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section, together with all costs and expenses (including Attorney Costs). The obligation of the Lenders in this Section shall survive the payment of all Obligations hereunder.

9.8. Agents in their Individual Capacity .

Each of BOA, LaSalle and Bank One and its respective 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 or other business with any Loan Party and its Affiliates as though BOA were not the Administrative Agent hereunder, LaSalle were not the Syndication Agent hereunder, Bank One were not the Documentation Agent hereunder and NCB were not the Co-Agent hereunder and, in each case, without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, BOA, LaSalle, Bank One or its respective 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 its Affiliates) and acknowledge that none of BOA, LaSalle, Bank One nor its Affiliates shall be under any obligation to provide such information to them. With respect to its Loans, each of BOA, LaSalle and Bank One shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each of BOA, LaSalle and Bank One in its individual capacity.

9.9. Successor Administrative Agent .

The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders; such resignation shall also constitute the Administrative

Agent's resignation as the Issuer and as the provider of the Swing Line Loans. If the Administrative Agent shall resign as Administrative Agent under this Agreement, the Majority Lenders, with the consent of the Company so long as no Default or Event of Default exists at such time, shall appoint from among the Lenders a successor administrative agent for the Lenders. If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent, with the consent of the Company so long as no Default or Event of Default exists at such time, may appoint a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent (including without limitation those in its capacity as the Issuer and as the provider of Swing Line Loans) and the term "Administrative Agent" shall mean such successor administrative agent and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX and Sections 10.4 and 10.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Majority Lenders appoint a successor administrative agent as provided for above. BOA may be removed as Administrative Agent at the request of all Lenders; notwithstanding the foregoing, however, BOA may not be removed as the Administrative Agent unless BOA or any Affiliate thereof acting as an Issuer hereunder shall also simultaneously be replaced as the Issuer and the provider of Swing Line Loans pursuant to documentation in form and substance reasonably satisfactory to BOA (and if applicable, such Affiliate).

9.10. Syndication Agent, Documentation Agent and Co-Agent.

Each of the Syndication Agent, the Documentation Agent and the Co-Agent, in its capacity as such, shall have no rights, powers, duties or responsibilities hereunder or any other Loan Document and no implied rights, powers, duties or responsibilities shall be read into this Agreement or any other Loan Document or otherwise exist on behalf of or against the Syndication Agent, the Documentation Agent or the Co-Agent, in its capacity as such. If LaSalle resigns as the Syndication Agent, no successor Syndication Agent shall be appointed. If Bank One resigns as the Documentation Agent, no successor Documentation Agent shall be appointed. If NCB resigns as the Co-Agent, no successor Co-Agent shall be appointed.

ARTICLE X
MISCELLANEOUS

10.1. Amendments and Waivers.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by such Loan Party and the Majority Lenders or, if the Lenders are not a party thereto, the Administrative Agent (with the prior written consent of the Majority Lenders), and then such waiver 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, or if the Lenders are not a party thereto, the Administrative Agent (with the prior written consent of all of the Lenders), do any of the following:

- (a) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to subsection 8.2(a)) or subject any Lender to any additional obligations;
- (b) postpone or delay any date fixed for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any Loan Document;
- (c) reduce the principal of, or the rate of interest specified herein on any Loan, or of any fees or other amounts payable hereunder or under any Loan Document;
- (d) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans which shall be required for the Lenders or any of them to take any action hereunder;
- (e) amend this Section 10.1 or Section 2.14 or any provision providing for consent or other action by all Lenders; or
- (f) discharge any Loan Party Guaranty;

and, provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Majority Lenders or all the Lenders, as the case may be, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document (including without limitation its rights and duties as the provider of Swing Line Loans), (ii) no amendment, waiver or consent shall, unless in writing and signed by the Issuer in addition to the Majority Lenders or all the Lenders, as the case may be, affect the rights or duties of the Issuer under this Agreement or any other Loan Document and (iii) the fees payable to the Administrative Agent

pursuant to subsection 2.10(a), (c) and (d) may be changed pursuant to a writing executed by the Company and the Administrative Agent.

10.2. Notice s .

(a) All notices, requests and other communications provided for hereunder 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 the applicable signature page hereof, and (ii) shall be followed promptly by a hard copy original thereof) and mailed, faxed or delivered, to the address or facsimile number specified for notices on the applicable signature page hereof; or, as directed to the Company or the Administrative Agent, to such other address as shall be designated by such party in a written notice to the other parties, and as directed to each other party, at such other address as shall be designated by such party in a written notice to the Company and the Administrative Agent.

(b) All such notices, requests and communications shall, when transmitted by overnight delivery be effective upon delivery, or when faxed, be effective when transmitted by facsimile machine, or if otherwise delivered, upon delivery; except that notices pursuant to Article II or IX shall not be effective until actually received by the Administrative Agent.

(c) The Company acknowledges and agrees that any agreement of the Administrative Agent and the Lenders at Article II herein to receive certain notices by telephone and facsimile is solely for the convenience and at the request of the Company. The Administrative Agent and the Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Company to give such notice and the Administrative 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 Administrative Agent or the Lenders in reliance upon such telephonic or facsimile notice. The obligation of the Company to repay the Loans shall not be affected in any way or to any extent by any failure by the Administrative Agent and the Lenders to receive written confirmation of any telephonic or facsimile notice or the receipt by the Administrative Agent and the Lenders of a confirmation which is at variance with the terms understood by the Administrative Agent and the Lenders to be contained in the telephonic or facsimile notice.

10.3. No Waiver ; Cumulative Remedies .

No failure to exercise and no delay in exercising, on the part of the Administrative 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.

10.4. Costs and Expenses.

The Company shall, whether or not the transactions contemplated hereby shall be consummated:

(a) pay or reimburse BOA (including in its capacity as Administrative Agent), within thirty (30) days after demand (subject to subsection 4.1(h)) for all reasonable costs and expenses incurred by BOA (including in its capacity as Administrative Agent), in connection with the development, preparation, negotiation, delivery, closing, on-going administration 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 the reasonable Attorney Costs incurred by BOA (including in its capacity as Administrative Agent) with respect thereto;

(b) pay or reimburse each Lender and each Agent within thirty (30) days after demand (subject to subsection 4.1(h)) for all reasonable costs and expenses incurred by them in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies during the existence of an Event of Default (including in connection with any “workout” or restructuring regarding the Loans, and including in any Insolvency Proceeding or appellate proceeding) under this Agreement, any other Loan Document, and any such other documents, including Attorney Costs, incurred by such Agent or such Lender; and

(c) pay or reimburse BOA (including in its capacity as Administrative Agent) within thirty (30) days after demand (subject to subsection 4.1(h)) for all reasonable appraisal (including the reasonable allocated cost of internal appraisal services), audit, environmental inspection and review (including the reasonable allocated cost of such internal services), search and filing costs, fees and expenses, incurred or sustained by BOA (including in its capacity as Administrative Agent) during the existence of an Event of Default in connection with the matters referred to under subsections (a) and (b) of this Section 10.4.

10.5. Indemnity.

Whether or not the transactions contemplated hereby shall be consummated:

(a) General Indemnity.

The Company shall pay, indemnify, and hold each Lender, each Agent and each of their 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 or disbursements (including Attorney Costs) of any kind or nature whatsoever with respect to any investigation, litigation or proceeding (including any Insolvency Proceeding or appellate proceeding) related to this Agreement or the Loans or the use of the proceeds thereof, the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Documents, or the transactions

contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Insolvency Proceeding or appellate proceeding) related to this Agreement or the Loans or the use of the proceeds thereof, 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 arising from the gross negligence or willful misconduct of such Indemnified Person.

(b) Environmental Indemnity.

(i) The Company hereby agrees to 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 reasonable 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, other than any such actions that constitute gross negligence or willful misconduct by such Indemnified Person.

(ii) In no event shall any site visit, observation, or testing by any Agent or any Lender (or any contractee of any 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 any Agent or any Lender. Neither any 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. Neither any Agent nor any Lender shall be obligated to 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 any Agent or any Lender.

(c) Survival; Defense.

The obligations in this Section 10.5 shall survive payment of all other Obligations. At the election of any Indemnified Person, the Company shall defend such Indemnified Person using legal counsel reasonably satisfactory to such Indemnified Person, at the sole cost and expense of the Company. All amounts owing under this Section 10.5 shall be paid within 30 days after demand.

10.6. Marshalling ; Payments Set Aside .

Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of the Company or any other Person or against or in payment of any or all of the Obligations. To the extent that the Company makes a payment or payments to any Agent or any Lender, or any Agent or any Lender exercise its rights of set-off, and such payment or payments or the proceeds of such enforcement or 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 Administrative Agent 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 enforcement or set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its ratable share of the total amount so recovered from or repaid by the Administrative Agent.

10.7. Successor s 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 Administrative Agent and each Lender.

10.8. Assignme nts, 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 Administrative Agent, which consents shall not be unreasonably withheld, at any time assign and delegate to one or more Persons (provided , that no written consent of the Company or the Administrative Agent shall be required in connection with any assignment and delegation by a Lender to an Affiliate of such Lender) (each an “Assignee”) all, or any ratable part of all, of the Loans, the Commitments and the other rights and obligations of such Lender hereunder, in a minimum amount of Five Million Dollars (\$5,000,000); provided , however , that the Company and the Administrative Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (A) written notice of such assignment, together with payment instructions, addresses and related information with respect to such Assignee, shall have been given to the Company and the Administrative Agent by such Lender and such Assignee; (B) such Lender and its Assignee shall have delivered to the Company and the Administrative Agent an Assignment and Assumption in the form of Exhibit H (“Assignment and Acceptance”) together with any Revolving Note or Revolving Notes subject to such assignment and (C) the assignor Lender or Assignee has paid to the Administrative Agent a processing fee in the amount of Three Thousand Five Hundred Dollars (\$3,500).

(b) From and after the date that the Administrative Agent notifies the assignor Lender that it has received (and 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 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 Administrative Agent that it has received an executed Assignment and Acceptance and payment of the processing fee (and provided, that it consents to such assignment pursuant to subsection 10.8 (a)), the Company shall execute and deliver to the Administrative Agent new Revolving 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 Revolving Notes in the principal amount of the Loans retained by the assignor Lender (such Revolving Notes to be in exchange for, but not in payment of, the Revolving 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 Commitment of the assigning Lender pro tanto.

(d) Any Lender may, upon prior written notice to the Company and the Administrative Agent, 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 and the Administrative 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 shall have 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 the first proviso to Section 10.1. In the case of any such participation, the Participant shall be entitled to the benefit of Sections 3.1, 3.3 and 10.5, with respect to its participation interest, as though it were also a Lender hereunder and subject to the same qualifications and limitations as if it were a Lender hereunder, and provided there is no duplicate recovery, but shall not have any other rights under this Agreement, or any of the other Loan Documents, and all amounts payable by the Company hereunder shall be determined as if such Lender had not sold such participation; except that, 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.

(e) Each Lender agrees 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 of the Company, or by the Administrative Agent on such Company's or Subsidiary's behalf, in connection with this Agreement or any other Loan Document, and neither it nor any of its Affiliates shall use any such information for any purpose or in any manner other than pursuant to the terms contemplated by this Agreement; except to the extent such information (i) was or becomes generally available to the public other than as a result of a disclosure by such Lender, 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 such Lender; provided, further, however, that any Lender may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which such 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 to which the Administrative 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, and (F) to such Lender's independent auditors and other professional advisors, provided that each such Person has agreed to preserve the confidentiality of such material. Notwithstanding the foregoing, the Company authorizes each Lender to disclose to any Participant or Assignee (each, a "Transferee") and to any prospective Transferee, such financial and other information in such Lender's possession concerning the Company or its Subsidiaries which has been delivered to any Agent or any Lender pursuant to this Agreement or which has been delivered to any Agent or any Lender by the Company in connection with the Lenders' credit evaluation of the Company prior to entering into this Agreement; provided, that, unless otherwise agreed by the Company, such Transferee agrees in writing to such Lender to keep such information confidential to the same extent required of the Lenders hereunder. In the event that any Agent or Lender or any recipient of nonpublic information obtained pursuant to clause (E) above is required or requested to disclose any confidential information pursuant to clauses (A)-(D) above, such recipient shall give the Company prompt prior written notice of such requirement or request so that the Company may seek an appropriate protective order, and, at the expense of the Company, such recipient shall cooperate with the Company in any proceedings to obtain such a protective order to the extent such cooperation is necessary to obtain such protective order and to the extent the recipient determines its cooperation will not be disadvantageous to it. In the absence of a protective order, if the recipient is nonetheless compelled or required to disclose such confidential information in the opinion of its legal counsel, it may disclose such confidential information, provided that the recipient shall give the Company written notice of the confidential information to be disclosed as far in advance of the disclosure as is practicable and, upon the request and at the expense of the Company, shall use its reasonable efforts to obtain assurances that confidential treatment shall be accorded such information by the receiving party.

(f) Notwithstanding any other provision contained in this Agreement or any other Loan Document to the contrary, any Lender may assign all or any portion of the Loans or Revolving Notes held by it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Federal Reserve Board and any Operating Circular issued by such Federal Reserve Bank, provided, that any payment in respect of such assigned Loans or Revolving Notes made by the Company to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy the Company's obligations hereunder in respect to such assigned Loans or Revolving Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder.

(g) BOA may assign its obligations as an Issuer to an Affiliate of BOA without the prior written consent of any party hereto. In connection with such assignment, each of the parties hereto agrees to execute such documents as are reasonably requested by such Affiliate of BOA to effectuate such assignment.

(h) Notwithstanding anything to the contrary contained herein, if at any time BOA assigns all of its Commitment and Loans pursuant to subsection 10.8(a) above, BOA may, (i) upon 30 days' notice to the Company and the Lenders, resign in its capacity as the Issuer hereunder and/or (ii) upon 30 days' notice to the Company, resign in its capacity as the provider of Swing Line Loans (the "Swing Line Lender"). In the event of any such resignation as the Issuer or the Swing Line Lender, the Company shall be entitled to appoint from among the Lenders a successor Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Company to appoint any such successor shall affect the resignation of BOA as the Issuer or the Swing Line Lender, as the case may be. If BOA resigns as the Issuer, it shall retain all the rights and obligations of the Administrative Agent as the Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the Issuer (including the right to require the Lenders to make Revolving Loans or fund participations therein pursuant to subsection 2.15(a)). If BOA resigns as the Swing Line Lender, it shall retain all the rights of the Administrative Agent as the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Revolving Loans or fund participations in outstanding Swing Line Loans pursuant to subsection 2.16(c). The Company, the Lenders and BOA agree that they shall amend this Agreement as necessary to reflect that BOA remains the Administrative Agent for purposes of administering this Agreement, but has resigned in its capacity as the Issuer and/or the Swing Line Lender and another Lender(s) shall provide such service, including the obligation of the successor to BOA as the Issuer to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or to make other arrangements satisfactory to BOA to effectively assume the obligations of BOA with respect to such Letters of Credit.

10.9. Set-off.

In addition to any rights and remedies of the Lenders provided by law, if an Event of Default exists, each Lender is authorized at any time and from time to time, without prior notice to the Company, any such notice being waived by the Company 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 to, such Lender to or for the credit or the account of the Company against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not the Administrative 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 Administrative Agent after any such set-off and application made by such Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 10.9 are in addition to the other rights and remedies (including other rights of set-off) which the Lender may have.

10.10. Collateral Account.

(a) In connection with the events described in Section 2.8, the Company hereby authorizes and directs the Administrative Agent to establish and maintain with the Administrative Agent, or at the Administrative Agent's election, with an Affiliate of the Administrative Agent, as a blocked account in the name of the Administrative Agent, on behalf of the Agents and the Lenders, a deposit account designated as the "Collateral Account".

(b) All amounts held in the Collateral Account pertaining to the Company shall secure the Obligations and may be applied to the Obligations as provided in the Loan Documents.

(c) Any interest received in respect of investments of any amounts deposited in the Collateral Account shall be remitted by the Administrative Agent to the Company on the last Business Day of each calendar quarter; provided, that the Administrative Agent shall not remit any such interest if any Event of Default has occurred and is continuing.

(d) Cash held by an Administrative Agent, or an Affiliate of the Administrative Agent, in the Collateral Account shall be invested or reinvested as follows:

(i) Any funds on deposit in the Collateral Account shall be held by the Administrative Agent, or any Affiliate of the Administrative Agent, in a non-interest-bearing account; provided, that so long as no Event of Default shall have occurred and be continuing, the Company may, pursuant to written instructions, direct the Administrative Agent to invest funds on deposit in the Collateral Account in Cash Equivalents as indicated in such instructions; and

(ii) The Administrative Agent is hereby authorized to sell, and shall sell, all or any designated part of the securities held in the Collateral Account (A) so long as no Event of Default shall have occurred and be continuing, upon receipt of appropriate written instructions from the Company or (B) in any event if such sale is necessary to permit the Administrative Agent

to perform its duties hereunder. The Administrative Agent shall not have any responsibility for any loss resulting from a fluctuation in interest rates, the sale or disposition of any Cash Equivalent prior to the maturity date or otherwise.

The Collateral Account shall be subject to such applicable laws, and such application regulations of the Board of Governors of the Federal Reserve System and of any other appropriate Governmental Authority, as may now or hereafter be in effect.

10.11. Notification of Addresses , Lending Offices, Etc.

Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to the Lender should be directed, of addresses of its Lending Offices, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

10.12. Counterparts .

This Agreement may be executed by one or more of the parties to this Agreement 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. A set of the copies of this Agreement signed by all the parties shall be lodged with the Company and the Administrative Agent.

10.13. 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.

10.14. No Third Parties Benefited .

This Agreement is made and entered into for the sole protection and legal benefit of the Company, the Lenders and the Agents, 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. Neither any Agent nor any Lender shall have any obligation to any Person not a party to this Agreement or other Loan Documents.

10.15. Time .

Time is of the essence as to each term or provision of this Agreement and each of the other Loan Documents.

10.16. Governing Law and Jurisdiction.

(a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS; PROVIDED, THAT THE COMPANY, THE AGENTS AND THE LENDERS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT AND ANY OTHER LOAN DOCUMENTS 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 COMPANY, EACH AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF THE COMPANY, EACH AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. THE COMPANY, EACH AGENT AND EACH LENDER EACH WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY ILLINOIS LAW. NOTWITHSTANDING THE FOREGOING, THE AGENTS AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE COMPANY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

10.17. Waiver of Jury Trial.

THE COMPANY, THE LENDERS AND THE AGENTS 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 PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE COMPANY, THE LENDERS AND THE AGENTS 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.

10.18. Automatic Debits of Fees.

With respect to any non-use fee, arrangement fee, agency fee, upfront facility fee, letter of credit fee or other fee, any interest payment, or any other cost or expense (including Attorney Costs) due and payable to the Administrative Agent or any Issuer under the Loan Documents, the Company hereby irrevocably authorizes BOA, upon 24 hours prior notice to the Company, to debit any deposit account of the Company with BOA in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense. 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 (in whole or in part, in BOA'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.

10.19. Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the Company, the Lenders and the Agents, and supersedes all prior or contemporaneous Agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof, except for the Fee Letter and any prior arrangements made with respect to the payment by the Company of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of any Agent or any Lender.

10.20. Patriot Act.

Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Company that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Company and each Subsidiary, which information includes the name and address of such Person and other information that will allow such Lender or Agent, as applicable, to identify such Person in accordance with the Patriot Act. The Company shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by any Agent or any Lender in order to assist such Agent or such Lender in maintaining compliance with the Patriot Act.

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.

LKQ CORPORATION

By /s/ Mark T. Spears
Its Senior Vice President & CFO

Address for notices:

120 North LaSalle Street, Suite 3300
Chicago, Illinois 60602
Attn: Mark Spears
Facsimile: (312) 621-1969
Telephone: (312) 621-2709

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

By /s/ David A. Johanson
Its Vice President

Address for notices:

231 South LaSalle Street Chicago, Illinois 60697
Attn: Agency Management Services
Facsimile: (312) 974-9102
Telephone: (312) 828-7933

Administrative Agent's Payment Office:

901 Main Street
Dallas, Texas 75202-3714
Attn: Angela Azu
Facsimile: (214) 290-9559
Telephone: (214) 209-3099

BANK OF AMERICA, N.A.,
as Issuer and as a Lender

By /s/ Craig W. McGuire
Its Vice President

Address for notices:

231 South LaSalle Street
Chicago, Illinois 60697
Attn: Craig McGuire
Facsimile: (312) 828-1974
Telephone: (312) 828-1320

Domestic and Offshore Lending Office:

901 Main Street
Dallas, Texas 75202
Attn: Matthew Stafford

LASALLE BANK NATIONAL ASSOCIATION,
as the Syndication Agent and as a Lender

By /s/ Steven M. Marks
Its FVP

Address for notices:

135 South LaSalle Street
Chicago, Illinois 60603
Attn: Mr. Steven M. Marks
Facsimile: (312) 904-4660
Telephone: (312) 904-6443

Domestic and Offshore Lending Office:

135 South LaSalle Street
Chicago, Illinois 60603
Attn: Bonita Conley

BANK ONE, NA,
as the Documentation Agent and as a Lender

By /s/ David J. Rudolph
Its Assistant Vice President

Address for notices:

120 South LaSalle, 2nd Floor – Mail Code IL1 1205
Chicago, Illinois 60603
Attn: David J. Rudolph
Facsimile: (312) 661-3566
Telephone: (312) 661-7075

Domestic and Offshore Lending Office:

120 South LaSalle, 2nd Floor – Mail Code IL1 1205
Chicago, Illinois 60603
Attn: David Rudolph

NATIONAL CITY BANK,
as the Co-Agent and as a Lender

By /s/ Richard Michalik
Its Senior Vice President

Address for notices:

2021 Spring Road, Suite 600
Oak Brook, IL 60523
Attn: Donna Benson
Facsimile: (630) 954-5570
Telephone: (630) 954-3189

Domestic and Offshore Lending Office:

2021 Spring Road, Suite 600
Oak Brook, IL 60523
Attn: Donna Benson