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

FORM 10-Q

(Mark One)

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

For the quarterly period ended February 29, 2004

OR

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

For the transition period from _____ to _____

Commission file number 001-16583

ACUITY BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

58-2632672
(I.R.S. Employer
Identification Number)

1170 Peachtree Street, N.E., Suite 2400, Atlanta, Georgia
(Address of principal executive offices)

30309
(Zip Code)

(404) 853-1400
(Registrant's telephone number, including area code)

None
(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock - \$0.01 Par Value - 42,585,219 shares as of April 2, 2004.

ACUITY BRANDS, INC.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

ACUITY BRANDS, INC.
CONSOLIDATED BALANCE SHEETS (Unaudited)
(In thousands, except share and per-share data)

	FEBRUARY 29, 2004	AUGUST 31, 2003
ASSETS		
Current Assets:		
Cash and cash equivalents	\$ 7,499	\$ 16,053
Receivables, less allowance for doubtful accounts of \$8,690 at February 29, 2004 and \$8,634 at August 31, 2003	293,877	302,276
Inventories	201,563	188,799
Deferred income taxes	26,988	23,047
Prepayments and other current assets	35,345	28,377
Total Current Assets	565,272	558,552
Property, Plant, and Equipment, at cost:		
Land	14,103	14,060
Buildings and leasehold improvements	167,406	164,974
Machinery and equipment	357,491	350,549
Total Property, Plant, and Equipment	539,000	529,583
Less: Accumulated depreciation and amortization	319,172	307,025
Property, Plant, and Equipment, net	219,828	222,558
Other Assets:		
Goodwill	348,014	345,676
Intangible assets	128,250	129,843
Other long-term assets	28,882	31,590
Total Other Assets	505,146	507,109
Total Assets	\$ 1,290,246	\$ 1,288,219
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Current maturities of long-term debt	\$ 1,555	\$ 1,339
Short-term secured borrowings	38,000	48,000
Revolving credit facility	7,100	5,000
Accounts payable	159,247	165,656
Accrued salaries, commissions, and bonuses	33,457	49,217
Other accrued liabilities	92,595	90,239
Total Current Liabilities	331,954	359,451
Long-Term Debt, less current maturities	390,830	391,469
Deferred Income Taxes	15,437	15,190
Self-Insurance Reserves, less current portion	16,591	16,126
Other Long-Term Liabilities	101,341	97,689
Commitments and Contingencies (Note 10)		
Stockholders' Equity:		
Preferred stock, \$0.01 par value, 50,000,000 shares authorized, none issued	—	—
Common stock, \$0.01 par value, 500,000,000 shares authorized, 42,547,249 and 41,674,996 shares issued and outstanding at February 29, 2004 and August 31, 2003	426	417
Paid-in capital	426,409	407,621
Retained earnings	54,556	44,755
Unearned compensation on restricted stock	(12,542)	(1,734)
Accumulated other comprehensive loss items	(34,756)	(42,765)
Total Stockholders' Equity	434,093	408,294
Total Liabilities and Stockholders' Equity	\$ 1,290,246	\$ 1,288,219

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

ACUITY BRANDS, INC.
CONSOLIDATED STATEMENTS OF INCOME (Unaudited)
(In thousands, except per-share data)

	THREE MONTHS ENDED		SIX MONTHS ENDED	
	FEBRUARY 29, 2004	FEBRUARY 28, 2003	FEBRUARY 29, 2004	FEBRUARY 28, 2003
Net Sales	\$ 491,039	\$ 489,387	\$ 1,008,577	\$ 994,613
Cost of Products Sold	289,591	294,054	592,422	592,320
Gross Profit	201,448	195,333	416,155	402,293
Selling, Distribution, and Administrative Expenses	177,068	175,927	363,177	356,605
Operating Profit	24,380	19,406	52,978	45,688
Other Expense (Income):				
Interest expense, net	8,927	9,519	17,644	19,293
Miscellaneous expense (income), net	579	(2,115)	277	(1,997)
Total Other Expense	9,506	7,404	17,921	17,296
Income before Provision for Income Taxes	14,874	12,002	35,057	28,392
Provision for Income Taxes	5,355	4,321	12,621	10,221
Net Income	\$ 9,519	\$ 7,681	\$ 22,436	\$ 18,171
Earnings Per Share:				
Basic Earnings per Share	\$ 0.23	\$ 0.19	\$ 0.54	\$ 0.44
Basic Weighted Average Number of Shares Outstanding	41,846	41,443	41,721	41,417
Diluted Earnings per Share	\$ 0.22	\$ 0.19	\$ 0.52	\$ 0.44
Diluted Weighted Average Number of Shares Outstanding	43,291	41,470	42,999	41,444
Dividends Declared per Share	\$ 0.15	\$ 0.15	\$ 0.30	\$ 0.30

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

ACUITY BRANDS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(In thousands)

	SIX MONTHS ENDED	
	FEBRUARY 29, 2004	FEBRUARY 28, 2003
Cash Provided by (Used for) Operating Activities:		
Net income	\$ 22,436	\$ 18,171
Adjustments to reconcile net income to net cash provided by (used for) operating activities:		
Depreciation and amortization	22,936	23,459
Loss (gain) on the sale of property, plant, and equipment	97	(887)
Gain on sale of business	(826)	—
Provision for losses on accounts receivable	1,599	1,681
Other	2,347	155
Change in assets and liabilities, net of effect of acquisitions and divestitures-		
Receivables	5,167	10,913
Inventories	(13,418)	20,785
Deferred income taxes	(3,694)	1,494
Prepayments and other current assets	(916)	(5,599)
Accounts payable	(6,409)	(4,262)
Other current liabilities	(17,833)	(18,059)
Other	12,209	6,143
Net Cash Provided by Operating Activities	23,695	53,994
Cash Provided by (Used for) Investing Activities:		
Purchases of property, plant, and equipment	(20,460)	(13,542)
Proceeds from sale of property, plant, and equipment	1,403	1,768
Proceeds from sale of business	2,305	—
Net Cash Used for Investing Activities	(16,752)	(11,774)
Cash Provided by (Used for) Financing Activities:		
Repayments of notes payable, net	—	(2,545)
Proceeds (repayments) of revolving credit facility, net	2,100	(40,000)
Repayments of short-term secured borrowings, net	(10,000)	(2,800)
Proceeds from issuance of long-term debt	—	22,202
Repayments of long-term debt	(458)	(362)
Proceeds from stock transactions	5,078	928
Dividends	(12,635)	(12,437)
Net Cash Used for Financing Activities	(15,915)	(35,014)
Effect of Exchange Rate Changes on Cash	418	(430)
Net Change in Cash and Cash Equivalents	(8,554)	6,776
Cash and Cash Equivalents at Beginning of Period	16,053	2,694
Cash and Cash Equivalents at End of Period	\$ 7,499	\$ 9,470
Supplemental Cash Flow Information:		
Income taxes paid during the period	\$ 17,245	\$ 16,423
Interest paid during the period	\$ 17,904	\$ 19,676

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

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Acuity Brands, Inc. (“Acuity Brands” or the “Company”) operates in two business segments – lighting equipment and specialty products. The lighting equipment segment designs, produces, and distributes a broad array of indoor and outdoor lighting fixtures for commercial and institutional, industrial, and residential applications for various markets throughout North America and select international markets. The specialty products segment produces and distributes specialty chemical products including cleaners, deodorizers, sanitizers, and pesticides for industrial and institutional, commercial, and residential applications primarily for various markets throughout North America and Western Europe.

The unaudited interim consolidated financial statements included herein have been prepared by the Company in accordance with accounting principles generally accepted in the United States and present the financial position, results of operations, and cash flows of Acuity Brands and its wholly-owned subsidiaries, including Acuity Lighting Group, Inc. (“Acuity Brands Lighting” or “ABL”) and Acuity Specialty Products Group, Inc. (“Acuity Specialty Products” or “ASP”). These interim consolidated financial statements reflect all normal and recurring adjustments which are, in the opinion of management, necessary to present fairly the consolidated financial position as of February 29, 2004 and August 31, 2003, the consolidated results of operations for the three and six months ended February 29, 2004 and February 28, 2003, and the consolidated cash flows for the six months ended February 29, 2004 and February 28, 2003. Certain reclassifications have been made to the prior-year financial statements to conform to the current-year presentation. Certain information and footnote disclosures normally included in the Company’s annual financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. The Company believes that the disclosures are adequate to make the information presented not misleading. These financial statements should be read in conjunction with the consolidated financial statements of Acuity Brands as of and for the three years ended August 31, 2003 and notes thereto included in the Company’s Annual Report on Form 10-K filed with the Securities and Exchange Commission on October 31, 2003 (File No. 001-16583).

The results of operations for the three and six months ended February 29, 2004 are not necessarily indicative of the results to be expected for the full fiscal year because the net sales and net income of the Company are generally higher in the second half of its fiscal year and because of the continued uncertainty of general economic conditions impacting the key end markets of the Company.

2. ACCOUNTING STANDARDS YET TO BE ADOPTED

On December 31, 2002, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 148, *Accounting for Stock-Based Compensation – Transition and Disclosure — an Amendment of FASB Statement No. 123*. SFAS No. 148 amends SFAS No. 123, *Accounting for Stock-Based Compensation*, to provide alternative methods of transition to the fair value method of accounting for stock-based employee compensation. The alternative methods include the prospective method, the modified prospective method, and the retroactive restatement method. SFAS No. 148 also amends the disclosure provisions of SFAS No. 123 to require prominent disclosure of the effects of an entity’s accounting policy with respect to stock-based employee compensation on reported net income and earnings per share in annual and interim financial statements, regardless of the method used to account for stock-based employee compensation. The Company anticipated adopting certain recognition provisions of SFAS No. 148 in the first quarter of fiscal 2004, which would have required stock options to be expensed. In light of recent public communications from the FASB, the Company has elected to delay the recognition of expense related to stock options until a final standard is promulgated. The FASB expects to issue the final standard by December 31, 2004. The Company continues to evaluate the impact the adoption of these recognition provisions will have on the Company’s results of operations. See Note 11 of *Notes to Consolidated Financial Statements* for further information.

In December 2003, the FASB issued SFAS No. 132 (Revised 2003), *Employers’ Disclosures about Pensions and Other Postretirement Benefits—an amendment of FASB Statements No. 87, 88, and 106*. This statement requires disclosures in addition to those required by the original SFAS No. 132 related to the assets, obligations, cash flows, and net periodic benefit cost of defined benefit pension plans and other defined benefit postretirement plans. These additional disclosures are required for the Company’s fiscal quarter ending May 31, 2004.

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

3. GOODWILL AND INTANGIBLE ASSETS

Summarized information for the Company's acquired intangible assets is as follows:

	February 29, 2004		August 31, 2003	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Amortized intangible assets:				
Trade names and trademarks	\$13,030	\$ (1,999)	\$13,030	\$ (1,782)
Distribution network	53,000	(8,098)	53,000	(7,216)
Other	11,857	(4,554)	17,080	(9,283)
Total	\$77,887	\$ (14,651)	\$83,110	\$ (18,281)
Unamortized intangible assets:				
Trade names	\$65,014		\$65,014	

The Company amortizes trade names with definite lives, trademarks, and the distribution network over their estimated useful lives of 30 years. Other amortized intangible assets consist primarily of patented technology which is amortized over its estimated useful life of 12 years. The Company recorded amortization expense of \$1.6 million related to intangible assets with definite lives in the first six months of fiscal 2004 and fiscal 2003. Amortization expense is projected to be approximately \$3.2 million in each of the next five years.

The changes in the carrying amount of goodwill since August 31, 2003 is summarized as follows:

	ABL	ASP	Total
Balance as of August 31, 2003	\$315,196	\$30,480	\$345,676
Currency translation adjustments	1,913	425	2,338
Balance as of February 29, 2004	\$317,109	\$30,905	\$348,014

ABL and ASP each test goodwill and intangible assets with indefinite useful lives for impairment on an annual basis, as required by SFAS No. 142, *Goodwill and Other Intangible Assets*, using a combination of valuation techniques including the expected present value of future cash flows, a market multiple approach, and a comparable transaction approach. This analysis did not result in an impairment during fiscal 2003. However, if these assets are deemed impaired in the future, it could have an adverse effect on the Company's *Consolidated Financial Statements*.

4. BUSINESS SEGMENT INFORMATION

Three Months Ended February 29, 2004	Net Sales	Operating Profit (Loss)	Depreciation	Amortization	Capital Expenditures
ABL	\$ 369,388	\$ 21,222	\$ 8,594	\$ 790	\$ 9,014
ASP	121,651	8,980	1,992	6	1,560
Corporate	—	(5,822)	181	—	5
Total	\$ 491,039	\$ 24,380	\$ 10,767	\$ 796	\$ 10,579

Three Months Ended February 28, 2003	Net Sales	Operating Profit (Loss)	Depreciation	Amortization	Capital Expenditures
ABL	\$ 368,792	\$ 18,826	\$ 8,697	\$ 790	\$ 4,633
ASP	120,595	4,811	1,988	7	1,620
Corporate	—	(4,231)	211	—	32
Total	\$ 489,387	\$ 19,406	\$ 10,896	\$ 797	\$ 6,285

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

Six Months Ended February 29, 2004	Net Sales	Operating Profit (Loss)	Depreciation	Amortization	Capital Expenditures
ABL	\$ 760,415	\$ 49,133	\$ 17,070	\$ 1,579	\$ 16,370
ASP	248,162	16,389	3,905	13	4,085
Corporate	—	(12,544)	369	—	5
Total	\$ 1,008,577	\$ 52,978	\$ 21,344	\$ 1,592	\$ 20,460

Six Months Ended February 28, 2003	Net Sales	Operating Profit (Loss)	Depreciation	Amortization	Capital Expenditures
ABL	\$ 751,450	\$ 44,893	\$ 17,471	\$ 1,579	\$ 9,554
ASP	243,163	8,482	3,962	19	3,951
Corporate	—	(7,687)	428	—	37
Total	\$ 994,613	\$ 45,688	\$ 21,861	\$ 1,598	\$ 13,542

	Total Assets	
	February 29, 2004	August 31, 2003
ABL	\$1,036,012	\$1,033,532
ASP	216,627	215,116
Corporate	37,607	39,571
Total	\$1,290,246	\$1,288,219

5. INVENTORIES

Inventories are valued at the lower of cost (on a first-in, first-out basis) or market and consist of the following:

	February 29, 2004	August 31, 2003
Raw materials and supplies	\$ 77,044	\$ 74,091
Work-in-process	26,314	22,201
Finished goods	109,234	104,932
	212,592	201,224
Less: reserves	(11,029)	(12,425)
Total	\$ 201,563	\$ 188,799

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

6. EARNINGS PER SHARE

The Company computes earnings per share in accordance with SFAS No. 128, *Earnings per Share*. Under this statement, basic earnings per share is computed by dividing net earnings available to common stockholders by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed similarly but includes all potentially dilutive stock options and restricted stock awards outstanding during the period. The following table calculates basic and diluted earnings per common share for the three and six months ended February 29, 2004 and February 28, 2003:

	Three Months Ended		Six Months Ended	
	February 29, 2004	February 28, 2003	February 29, 2004	February 28, 2003
Basic earnings per common share:				
Net income	\$ 9,519	\$ 7,681	\$ 22,436	\$ 18,171
Basic weighted average shares outstanding	41,846	41,443	41,721	41,417
Basic earnings per common share	<u>\$ 0.23</u>	<u>\$ 0.19</u>	<u>\$ 0.54</u>	<u>\$ 0.44</u>
Diluted earnings per common share:				
Net income	\$ 9,519	\$ 7,681	\$ 22,436	\$ 18,171
Basic weighted average shares outstanding	41,846	41,443	41,721	41,417
Common stock equivalents (stock options and restricted stock)	1,445	27	1,278	27
Diluted weighted average shares outstanding	<u>43,291</u>	<u>41,470</u>	<u>42,999</u>	<u>41,444</u>
Diluted earnings per common share	<u>\$ 0.22</u>	<u>\$ 0.19</u>	<u>\$ 0.52</u>	<u>\$ 0.44</u>

7. DERIVATIVE FINANCIAL INSTRUMENTS

During fiscal 2004, the Company entered into certain foreign currency contracts to hedge its exposure to variability in exchange rates on certain anticipated intercompany transactions with a Canadian business unit. At February 29, 2004, the Company had foreign currency contracts outstanding with an aggregate notional amount of \$18.0 million. These contracts mature monthly in \$3.0 million increments. The fair value of these contracts represented an unrealized pre-tax gain of approximately \$0.3 million at February 29, 2004.

The Company accounts for these contracts in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities, as amended by SFAS No. 137, SFAS No. 138, and SFAS No. 149*. The Company's foreign currency contracts have been designated as foreign currency cash flow hedges and, accordingly, gains or losses resulting from changes in the fair value of these contracts are included in Accumulated Other Comprehensive Loss Items until the hedged transaction occurs, at which time the related gains or losses are recognized. Amounts included in future earnings related to these contracts may differ from amounts currently recorded in Accumulated Other Comprehensive Loss Items.

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

8. COMPREHENSIVE INCOME

The Company accounts for comprehensive income as prescribed by SFAS No. 130, *Reporting Comprehensive Income*. SFAS No. 130 requires the reporting of a measure of all changes in equity that result from recognized transactions and other economic events other than transactions with owners in their capacity as owners. Other comprehensive income includes foreign currency translation adjustments and unrealized gains (losses) on foreign currency contracts. The calculation of comprehensive income is as follows:

	Three Months Ended		Six Months Ended	
	February 29, 2004	February 28, 2003	February 29, 2004	February 28, 2003
Net income	\$ 9,519	\$ 7,681	\$ 22,436	\$ 18,171
Unrealized gain on foreign currency contracts, net of tax	315	—	235	—
Foreign currency translation adjustments, net of tax	2,635	1,011	7,775	(448)
Comprehensive Income	\$ 12,469	\$ 8,692	\$ 30,446	\$ 17,723

Foreign currency translation adjustments for the three and six months ended February 29, 2004 resulted primarily from the weakening of the U.S. dollar against certain currencies, particularly the Euro and the Canadian Dollar. The unrealized gain on foreign currency contracts for the three and six months ended February 29, 2004 resulted from an increase in the fair value of the foreign currency contracts discussed in Note 7 above.

9. SECURED BORROWINGS AND LONG-TERM DEBT

The Company maintains an agreement (“Receivables Facility”) to borrow, on an ongoing basis, up to \$150.0 million secured by undivided interests in a defined pool of trade accounts receivable of the lighting equipment and specialty products segments. Borrowings under the Receivables Facility are subject to the annual renewal of a supporting line of credit. Net trade accounts receivable pledged as security for borrowings under the Receivables Facility totaled \$257.6 million at February 29, 2004. Borrowings at February 29, 2004 under the Receivables Facility totaled \$38.0 million. Interest rates under the Receivables Facility vary with commercial paper rates plus an applicable margin.

The Company also maintained certain financing agreements (“Revolving Credit Facility”) with a group of domestic and international banks that had two components allowing for borrowings of up to \$197.5 million. The first component was a \$92.5 million, 364-day committed credit facility that was scheduled to mature in April 2004. The second component was a three-year credit facility that allowed for borrowings up to \$105.0 million and was scheduled to mature in April 2005.

The Revolving Credit Facility contained financial covenants including a leverage ratio (“Maximum Leverage Ratio”) of total indebtedness to EBITDA (earnings before interest, taxes, depreciation and amortization expense), as such terms were defined in the Revolving Credit Facility, and a minimum interest coverage ratio. These ratios were computed at the end of each fiscal quarter. The Maximum Leverage Ratio was 3.25 at February 29, 2004. The Company was in compliance with all financial covenants and had \$7.1 million in outstanding borrowings under the Revolving Credit Facility at February 29, 2004.

In April 2004, the Company executed a new \$200.0 million, 58-month revolving credit facility (“New Facility”) that replaced the Company’s Revolving Credit Facility. The New Facility extends the maturity of the previous facility and provides for an increase in the Maximum Leverage Ratio to 3.50, subject to certain conditions defined in the financing agreement.

The Company’s Receivables Facility and New Facility each contain “Material Adverse Effect” provisions. Generally, if the Company were to experience an event causing a material adverse effect on the Company’s financial condition, operations, or properties, as defined in the agreements, additional future borrowings under either facility may be denied. None of the Company’s existing debt instruments include provisions that would require an acceleration of repayments based solely on changes in the Company’s credit ratings.

ACUITY BRANDS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)
(Amounts in thousands, except share and per-share data and as indicated)

At February 29, 2004, the Company had outstanding letters of credit totaling \$32.2 million primarily for the purpose of securing collateral requirements under the casualty insurance programs for Acuity Brands and certain programs of National Service Industries, Inc. ("NSI") (see Note 10 for further information) and for providing credit support for the Company's industrial revenue bonds. At February 29, 2004, a total of \$20.5 million of the letters of credit were issued under the three-year component of the Revolving Credit Facility, thereby reducing the total availability under the line by such amount.

10. COMMITMENTS AND CONTINGENCIES

Litigation

Acuity Brands is subject to various legal claims arising in the normal course of business, including patent infringement and product liability claims. Based on information currently available, it is the opinion of management that the ultimate resolution of pending and threatened legal proceedings will not have a material adverse effect on the financial condition or results of operations of Acuity Brands. However, in the event of unexpected future developments, it is possible that the ultimate resolution of such matters, if unfavorable, could have a material adverse effect on the results of operations of Acuity Brands in future periods. Acuity Brands establishes reserves for legal claims when the costs associated with the claims become probable and can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher than the amounts reserved for such claims.

Environmental Matters

The operations of the Company are subject to numerous comprehensive laws and regulations relating to the generation, storage, handling, transportation, and disposal of hazardous substances and solid and hazardous wastes and to the remediation of contaminated sites. In addition, permits and environmental controls are required for certain of the Company's operations to limit air and water pollution, and these permits are subject to modification, renewal, and revocation by issuing authorities. On an ongoing basis, Acuity Brands incurs capital and operating costs relating to environmental compliance. Environmental laws and regulations have generally become stricter in recent years. The cost of responding to future changes may be substantial. Acuity Brands establishes reserves for known environmental claims when the costs associated with the claims become probable and can be reasonably estimated. The actual cost of environmental issues may be higher than that reserved due to difficulty in estimating such costs and potential changes in the status of government regulations.

Certain environmental laws can impose liability regardless of fault. The federal Superfund law is an example of such an environmental law. However, management believes that the Company's potential liability under Superfund is mitigated by the presence of other parties who will share in the costs associated with the clean up of sites. The extent of liability is determined on a case-by-case basis taking into account many factors, including the number of other parties whose status or activities also subjects them to liability regardless of fault.

Acuity Brands is currently a party to, or otherwise involved in, legal proceedings in connection with state and federal Superfund sites. Based on information currently available, the Company believes its liability is immaterial at each of the currently active sites which it does not own where it has been named as a responsible party or a potentially responsible party ("PRP") due to its limited involvement at the site and/or the number of viable PRPs. For example, the preliminary allocation among 48 PRPs at the Crymes Landfill site in Georgia indicates that Acuity Brands' liability is not significant, and there are more than 1,000 PRPs at the M&J Solvents site in Georgia, which has included Acuity Brands as a PRP. For property that Acuity Brands owns on Seaboard Industrial Boulevard in Atlanta, Georgia, the Company has conducted an investigation on its property and adjoining properties and submitted a Compliance Status Report ("CSR") and a proposed Corrective Action Plan ("CAP") to the State of Georgia Environmental Protection Division ("EPD") pursuant to the Georgia Hazardous Site Response Act. The Company is currently addressing specific requests by EPD that EPD requires to finalize the CSR and CAP under the Georgia Rules for Hazardous Site Response. Until the EPD approves the CSR and CAP, Acuity Brands will not be able to determine whether corrective action will be required and what the costs of such action will be.

In August 2003, ASP received a grand jury subpoena from the United States Attorney for the Northern District of Georgia concerning the operation of ASP's wastewater pretreatment plant and ASP's management of hazardous waste at a facility in Atlanta, Georgia. The grand jury investigation appears to relate to the discharge of wastewater from the facility to the City of Atlanta's sanitary sewer system and ASP's practices in connection with the sampling of the facility's wastewater discharges for permitting purposes. ASP is cooperating with the investigation by the U.S. Attorney's Office and has completed the production of the required documents. The U.S. Attorney's Office investigation follows an inquiry by the City of Atlanta, which regulates the wastewater discharge at the facility. The Company has settled with the City of Atlanta all issues arising from the inquiry. As of February 29, 2004, the Company

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(Amounts in thousands, except share and per-share data and as indicated)

had reserved approximately \$2.0 million to cover various costs including off-site disposal, the estimated costs of resolution of proceedings with the U.S. Attorney's Office, and the estimated legal expenses to be incurred by the Company for these matters. The proceedings with the U.S. Attorney are at a preliminary stage, and developments in the investigation and the terms of any final settlement or adjudication of these matters could cause the Company to record additional charges in future periods.

Guarantees and Indemnities

The Company is a party to contracts entered into in the normal course of business in which it is common for the Company to agree to indemnify third parties for certain liabilities that may arise out of or relate to the subject matter of the contract. In some cases, the Company cannot estimate the potential amount of future payments under these indemnities until events arise that would result in a liability under the indemnities.

In connection with the sale of assets and the divestiture of businesses, the Company has from time to time agreed to indemnify the purchaser from liabilities relating to events occurring prior to the sale and conditions existing at the time of the sale. These indemnities generally include potential environmental liabilities, general representations and warranties concerning the asset or business, and certain other liabilities not assumed by the purchaser. Indemnities associated with the divestiture of businesses are generally limited in amount to the sales price of the specific business or are based on a lower negotiated amount and expire at various times, depending on the nature of the indemnified matter, but in some cases do not expire until the applicable statute of limitations expires. The Company does not believe that any amounts that it may be required to pay under these indemnities will be material to the Company's results of operations, financial position, or liquidity.

Prior to November 30, 2001, Acuity Brands was a wholly-owned subsidiary of NSI, owning and operating the lighting equipment and specialty products businesses. Acuity Brands was spun off from NSI into a separate publicly traded company with its own management and board of directors through a tax-free distribution ("Distribution") of 100 percent of the outstanding shares of common stock of Acuity Brands on November 30, 2001. Each NSI stockholder of record as of November 16, 2001, the record date for the Distribution, received one share of Acuity Brands common stock for each share of NSI common stock held at that date.

In conjunction with the separation of their businesses, Acuity Brands and NSI entered into various agreements that addressed the allocation of assets and liabilities and defined the Company's relationship with NSI after the Distribution, including a distribution agreement, a transition services agreement, and a tax disaffiliation agreement. With respect to the indemnities under those agreements, the Company previously accrued for those liabilities existing at the time of the Distribution that were considered probable and reasonably estimable. The Company has not accrued any additional amounts subsequent to the Distribution related to the following indemnities:

Distribution Agreement-

The distribution agreement provides that Acuity Brands will indemnify NSI for pre-Distribution liabilities related to the businesses that comprise Acuity Brands and previously owned businesses in the lighting equipment and specialty products segments. This indemnity does not expire and there is no stated maximum potential liability.

To satisfy its obligations under the distribution agreement with respect to the lighting equipment and specialty products segments, Acuity Brands provides letters of credit on behalf of NSI for collateral requirements under NSI's casualty programs for incurred and projected losses resulting from those segments prior to the Distribution which are covered by NSI casualty programs. This collateral requirement is \$2.4 million for fiscal year 2004.

Transition Services Agreement-

In addition to other services described in the agreement (all of which are complete), the transition services agreement provides that Acuity Brands will, for a fee, provide letters of credit to secure NSI's obligations under various casualty insurance programs of NSI not to exceed the following amounts:

<u>Period</u>		
<u>Beginning</u>	<u>Ending</u>	<u>Letters of Credit</u>
November 1, 2003	October 31, 2004	\$ 5.0 million
November 1, 2004	October 31, 2005	\$ 2.0 million

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Under this provision, at February 29, 2004, Acuity Brands had \$5.0 million of outstanding standby letters of credit that were issued for the benefit of NSI. In the event NSI is unable to fulfill its obligations under certain of its casualty insurance programs, the standby letters of credit could be drawn upon and Acuity Brands would be required to fund the drawn amount. In such event, NSI would be obligated to reimburse Acuity Brands for such amounts. The management of Acuity Brands currently believes it is unlikely that these letters of credit will be drawn upon.

Tax Disaffiliation Agreement-

The tax disaffiliation agreement provides that Acuity Brands will indemnify NSI for certain taxes and liabilities that may arise related to the Distribution and, generally, for deficiencies, if any, with respect to federal, state, local, or foreign taxes of NSI for periods before the Distribution. Liabilities determined under the tax disaffiliation agreement terminate upon the expiration of the applicable statute of limitation for such liability. There is no stated maximum potential liability included in the tax disaffiliation agreement.

The Company does not believe that any amounts that it may be required to pay under these indemnities will be material to the Company's results of operations, financial position, or liquidity. The Company cannot estimate the potential amount of future payments under these indemnities until events arise that would result in a liability under the indemnities.

Product Warranty

Acuity Brands records an allowance for the estimated amount of future warranty claims when the related revenue is recognized, primarily based on historical experience. Although historical warranty costs have been within expectations, there can be no assurance that future warranty costs will not exceed historical amounts. If actual future warranty costs exceed historical amounts, additional allowances may be required, which could have a material adverse impact on the Company's operating results in future periods.

In February 2004, the Company initiated a voluntary product recall with the United States Consumer Product Safety Commission. The recall, which commenced on March 10, 2004, involves approximately 52,600 lighting fixtures manufactured by ABL at one of its facilities from November 2002 through October 2003 that may have incorporated faulty capacitors produced by one of ABL's suppliers. The recalled fixtures are certain models of indoor High Intensity Discharge ("HID") lighting fixtures with at least one acrylic component (reflector or lens). The fixtures are used primarily in industrial and commercial locations such as retail spaces, warehouses, and gymnasiums.

The capacitor used in the recalled fixtures can leak polypropylene glycol ("PPG") fluid onto the acrylic lens and/or reflector of the fixture, causing the acrylic component(s) to degrade. In several reported instances, this has resulted in lenses or reflectors cracking and pieces of acrylic falling from the fixtures. To date, there have been only limited reports of personal injury and property damage. ABL is providing a replacement fixture or capacitor for every fixture that meets the recall criteria.

In addition to the expenses associated with this recall, ABL expects to incur higher-than-normal warranty expenses in connection with certain other types of indoor and outdoor HID fixtures that may incorporate the faulty capacitor but exhibit a less serious failure mode. In the case of these fixtures, the PPG fluid may accumulate in or drip from the fixture. ABL will repair or replace these fixtures upon failure.

During the quarter ended February 29, 2004, the Company accrued a liability of \$5.7 million for the estimated recall expenses and additional related warranty expenses. The Company also recorded a receivable equal to the liability accrued because the supplier of the faulty capacitors entered into a reimbursement agreement pursuant to which it has committed to reimburse the Company on a monthly basis for recall and warranty expenses up to the amount of the liability the Company recognized. The actual recall and warranty expenses could be substantially different than the liability recorded by the Company. In the event the expenses exceed \$5.7 million, the Company and the supplier have committed in good faith to agree upon the additional amount payable by the supplier.

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The changes in product warranty reserve during the six months ended February 29, 2004 are summarized as follows:

Balance as of August 31, 2003	\$ 4,289
Change in warranty reserve related to capacitors	5,700
Warranty expense during the period	721
Payments made during the period	(1,724)
	<hr/>
Balance as of February 29, 2004	<u>\$ 8,986</u>

11. STOCK-BASED COMPENSATION

The Company issues stock options to employees and directors under certain of its benefit plans. Under all stock option plans, the options expire no later than 10 years from the date of grant and have an exercise price no less than the fair market value of the Company's stock on the date of grant. The Company accounts for the employee and director plans under the Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* and related interpretations. Additionally, Acuity Brands has adopted the disclosure provisions portion only of SFAS No. 148, *Accounting for Stock-Based Compensation – Transition and Disclosure – an Amendment to FASB Statement No. 123*. Accordingly, no compensation expense has been recognized for these stock option plans in the *Consolidated Financial Statements*. Had compensation cost for the Company's stock option plans been determined based on the fair value at the grant date for awards subsequent to the Distribution, consistent with the recognition provisions of SFAS No. 123, the Company's net income and earnings per share would have been impacted as follows:

	Three Months Ended		Six Months Ended	
	February 29, 2004	February 28, 2003	February 29, 2004	February 28, 2003
Net income, as reported	\$ 9,519	\$ 7,681	\$ 22,436	\$ 18,171
Less: Compensation expense related to the Employee Stock Purchase Plan, net of tax	66	73	131	156
Less: Stock-based compensation determined under fair-value-based method for stock option awards, net of tax	1,026	571	1,636	1,126
	<hr/>	<hr/>	<hr/>	<hr/>
Net income, pro forma	<u>\$ 8,427</u>	<u>\$ 7,037</u>	<u>\$ 20,669</u>	<u>\$ 16,889</u>
Earnings per share:				
Basic earnings per share – as reported	\$ 0.23	\$ 0.19	\$ 0.54	\$ 0.44
Basic earnings per share – pro forma	\$ 0.20	\$ 0.17	\$ 0.50	\$ 0.41
Diluted earnings per share – as reported	\$ 0.22	\$ 0.19	\$ 0.52	\$ 0.44
Diluted earnings per share – pro forma	\$ 0.20	\$ 0.17	\$ 0.48	\$ 0.41

The above pro-forma calculations only include the effects of options granted subsequent to the Distribution. The pro forma effect of applying SFAS No. 123 may not be representative of the effect on reported net income in future years because options vest over several years and varying amounts of awards are generally made each year.

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

The following discussion should be read in conjunction with the *Consolidated Financial Statements* and related notes. References made to years are for fiscal year periods.

Overview

Purpose

The purpose of this discussion and analysis is to enhance the understanding and evaluation of the results of operations, financial position, cash flows, indebtedness, and other key financial information of Acuity Brands and its subsidiaries for the periods ended February 29, 2004 and February 28, 2003. For a more complete understanding of this discussion, please read the *Notes to Consolidated Financial Statements* included in this report. Also, please refer to the Company's Annual Report on Form 10-K for the fiscal year ended August 31, 2003, filed with the Securities and Exchange Commission on October 31, 2003, for additional information regarding the Company.

Company

Acuity Brands is a holding company that owns and manages two business units, each operating a collection of businesses and product lines with well-known brands that design, produce, and distribute products and provide services to customers in numerous channels for consumer, commercial, institutional, and industrial applications. The business units of Acuity Brands operate in two distinct segments based on the different products produced and the customers served: Acuity Lighting Group, Inc. ("Acuity Brands Lighting" or "ABL") and Acuity Specialty Products Group, Inc. ("Acuity Specialty Products" or "ASP"). Acuity Brands, with its principal office in Atlanta, Georgia, has approximately 11,000 employees worldwide.

ABL produces a broad array of indoor and outdoor lighting fixtures for commercial and institutional, industrial, and residential applications for markets throughout North America and select international markets. The Company believes ABL is one of the world's leading producers and distributors of lighting fixtures, with a broad, highly configurable product offering, consisting of roughly 500,000 active products as part of over 2,000 product groups that are sold to approximately 5,000 customers. ABL operates 28 factories and distribution facilities to serve its extensive customer base.

ASP is a leading producer of specialty chemical products including cleaners, deodorizers, sanitizers, and pesticides for industrial and institutional, commercial, and residential applications primarily for markets throughout North America and Western Europe. ASP sells, through its salaried and commissioned direct sales force, over 9,000 different products, operates six plants, and serves over 300,000 customers through a network of distribution centers and warehouses.

Liquidity and Capital Resources

Principal sources of liquidity for the Company are operating cash flows generated primarily from its business segments and various sources of borrowings, primarily from banks. The ability of the Company to generate sufficient cash flow from operations and to be able to access certain capital markets, including banks, is necessary for the Company to meet its obligations as they become due and maintain compliance with covenants contained in its financing agreements. The Company's ongoing liquidity will depend on a number of factors, including available cash resources, cash flows from operations, and the Company's ability to comply with covenants contained in certain of its financing agreements.

Based on current earnings projections and prevailing market conditions, both for customer demand and various capital markets, the Company believes that during fiscal 2004 it will have sufficient liquidity and availability under its financing arrangements to fund its operations as currently planned and its anticipated capital investment and profit improvement initiatives, to repay borrowings as currently scheduled, to pay the same quarterly stockholder dividend per share in 2004 as was paid in 2003, and to make required contributions into the Company's pension plans. The Company expects to invest approximately \$50.0 million for new plant and equipment during fiscal 2004, as compared to \$28.2 million in fiscal 2003. The increase in capital spending in fiscal 2004 compared to fiscal 2003 is due primarily to expenditures related to the consolidation of certain manufacturing facilities and enhancements to information technology capabilities at ABL and investments to improve manufacturing and waste management capabilities at ASP. The Company expects to reduce total debt by the end of fiscal 2004 to approximately \$400.0 million.

Cash Flow

Acuity Brands generated \$23.7 million of cash flow from operations during the first six months of 2004 compared to \$54.0 million generated in the prior year period. Cash flow from operations declined \$30.3 million due primarily to a decrease in cash provided by operating working capital (defined as accounts receivable, net, plus inventory, minus accounts payable). Operating working capital

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increased by approximately \$10.8 million to \$336.2 million at February 29, 2004 from \$325.4 million at August 31, 2003. The increase in operating working capital was due primarily to higher inventory at ABL. Inventory increased at ABL to better enable the Company to meet customer service requirements while consolidating manufacturing facilities and implementing new information systems at certain of ABL's manufacturing facilities.

Capital expenditures were \$20.5 million in the first six months of 2004, an increase of approximately \$6.9 million from the same period in the prior year. The Company continues to invest in new tooling and equipment primarily to improve productivity and product quality, increase manufacturing efficiencies, and enhance customer service capabilities in each segment. The increase in capital expenditures was due primarily to higher investment at ABL as the Company continues to consolidate certain manufacturing facilities and enhance its information technology capabilities. The Company used available cash flow in the first six months of 2004 and 2003 primarily to fund capital expenditures, to pay dividends, and to reduce outstanding borrowings.

Capitalization

The capital structure of the Company is comprised principally of an asset-backed securitization program, borrowings from banks, senior notes, and the equity of its stockholders. Total debt outstanding decreased to \$437.5 million at February 29, 2004 from \$445.8 million at August 31, 2003.

Borrowings under the Company's primary bank financing agreement ("Revolving Credit Facility") are limited by financial covenants, the most restrictive of which is a leverage ratio calculated at the end of each fiscal quarter. The leverage ratio is calculated by dividing total indebtedness at the end of the quarter by EBITDA (earnings before interest, taxes, depreciation and amortization expense), as such terms are defined in the Revolving Credit Facility, for the trailing four quarters. Generally, the financial covenants included in the Company's other financing agreements are consistent with the financial covenants contained in the Revolving Credit Facility. The Company was in compliance with all financial covenants contained in its financing agreements at February 29, 2004.

In April 2004, the Company executed a new \$200.0 million, 58-month financing agreement with a group of domestic and international banks ("New Facility"). The New Facility replaced the Company's existing Revolving Credit Facility. The New Facility extends the maturity of the Revolving Credit Facility and provides for an increase in the leverage ratio to 3.50, subject to certain conditions defined in the financing agreement. See Note 9 of *Notes to Consolidated Financial Statements* contained in this Form 10-Q.

During the first six months of fiscal 2004, the Company's consolidated stockholders' equity increased \$25.8 million to \$434.1 million at February 29, 2004. The increase was due primarily to net income earned during the period, fluctuations in foreign exchange rates, and the issuance of shares related to the exercise of stock options, partially offset by the payment of dividends. The Company's debt to total capital ratio was 50.2% at February 29, 2004, down from 52.2% at August 31, 2003.

Dividends

The Company paid cash dividends on common stock of \$12.6 million (\$0.30 per share) during the first six months of fiscal 2004. The Company expects to pay annual stockholder dividends of \$0.60 per share during fiscal 2004, consistent with fiscal 2003.

Results of Operations

Second Quarter of Fiscal 2004 Compared to Second Quarter of Fiscal 2003

Consolidated Results

Net sales for the quarter ended February 29, 2004 were \$491.0 million compared to \$489.3 million reported in the year-ago period, a nominal increase of \$1.7 million, or 0.3%. The growth in net sales, which occurred in both of the Company's segments, was due primarily to greater shipments to the home improvement channel at ABL and industrial and institutional channels at ASP, better pricing, and improvements in the mix of products sold. These items were partially offset by lower sales in certain other channels, primarily those serving the non-residential construction market. Consolidated gross profit margins increased to 41.0% of net sales in the second quarter of fiscal 2004, from 39.9% reported in the year-ago period, due primarily to favorable price and mix changes and the impact of profit improvement programs, partially offset by higher costs associated with certain raw materials and expenses related to the consolidation of certain manufacturing facilities at ABL. Consolidated operating expenses increased slightly to 36.1% of net sales in the second quarter of fiscal 2004, compared to 35.9% of net sales in the year-ago period. The increase was due primarily to higher corporate and ABL operating expenses, partially offset by lower spending at ASP.

Consolidated operating profit of \$24.4 million increased by \$5.0 million, or 25.8%, in the second quarter of fiscal 2004 compared to the year-ago period. Consolidated operating profit margins were 5.0% of net sales in the second quarter of fiscal 2004 compared to 4.0% reported in the similar period in 2003. The improvement in operating profit and margin was due primarily to better pricing, the impact of sourcing and other savings initiatives, and lower spending, partially offset by higher costs at ABL related to the consolidation of

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manufacturing facilities and higher corporate expenses primarily related to stock-based programs. Net income for the second quarter of fiscal 2004 increased 23.4% to \$9.5 million from \$7.7 million reported in the second quarter of fiscal 2003. The increase in net income resulted primarily from the increase in operating profit noted above and lower interest expense associated with the decrease in outstanding borrowings, partially offset by fewer gains on the sale of assets. Diluted earnings per share in the second quarter of fiscal 2004 was \$0.22 compared to \$0.19 reported in the second quarter of 2003, an increase of 15.8%. This increase was due primarily to an increase in net income, partially offset by an increase in common stock equivalents.

Acuity Brands Lighting

Net sales at ABL in the second quarter of fiscal 2004 were \$369.4 million compared to \$368.8 million reported in the year-ago period, an increase of \$0.6 million. The increase was due primarily to greater shipments of products to the home improvement channel and the impact of pricing initiatives. This was partially offset by lower sales in certain key commercial, industrial, and electric utility channels. While net sales increased slightly during the second quarter of fiscal 2004, incoming orders remained soft, reflecting continued weak economic conditions, particularly in the commercial and industrial construction channel. The backlog at ABL increased approximately \$20.9 million, or 17.0%, to \$144.2 million at February 29, 2004 from \$123.3 million at November 30, 2003, reflecting the normal seasonal pattern for the non-residential construction market.

Operating profit at ABL increased \$2.4 million, or 12.8%, to \$21.2 million in the second quarter of fiscal 2004 from \$18.8 million reported in the prior year. Operating profit margins improved to 5.7% of net sales in the second quarter of fiscal 2004 from 5.1% reported in the same period a year ago. The increase in operating profit and margins was due primarily to better pricing, favorable product mix changes, and benefits from initiatives to reduce product costs and contain expenses. In addition, ABL recognized a benefit related to the settlement of a patent infringement lawsuit during the second quarter of fiscal 2004. The improvement in operating profit was partially offset by higher costs associated with the consolidation of certain manufacturing facilities, freight expenses, and employee-related expenses.

Acuity Specialty Products

Net sales at ASP in the second quarter of fiscal 2004 were \$121.7 million compared to \$120.6 million reported in the year-ago period, representing an increase of \$1.1 million, or 0.9%. The increase in net sales was due primarily to greater shipments to institutional and industrial customers in both domestic and international markets, partially offset by lower shipments in the retail channel and the divestiture of a small product line during the first quarter of fiscal 2004. International sales were also favorably impacted by changes in exchange rates.

Operating profit at ASP in the second quarter of fiscal 2004 increased \$4.2 million, or 87.5%, to \$9.0 million from \$4.8 million reported in the year-ago period. Operating margins advanced to 7.4% of net sales from 4.0% of net sales a year ago. The improvement in operating profit and margin was due primarily to the higher sales noted above, the impact of price increases, lower employee-related costs such as medical plan expenses, and lower general and administrative expenses.

Corporate

Corporate expenses were \$5.8 million in the second quarter of fiscal 2004 compared to \$4.2 million in the year-ago period. The increase was due primarily to greater expense for Company-wide restricted stock incentives resulting from a greater mix of restricted stock compared to stock options used in the year-ago period. Corporate expenses in 2004 also included expenditures to facilitate compliance with the Sarbanes-Oxley Act.

Other Expense (Income)

Other expense (income) for Acuity Brands consisted primarily of interest expense and other miscellaneous non-operating activity including gains or losses on the sale of assets and foreign currency transactions. Interest expense, net, was \$8.9 million, a decrease of \$0.6 million, or 6.2%, from the year-ago period. This decrease was primarily due to a reduction in outstanding debt.

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Six Months of Fiscal 2004 Compared to Six Months of Fiscal 2003

Consolidated Results

Net sales for the six months ended February 29, 2004 were \$1,008.6 million compared to \$994.6 million reported in the year-ago period, an increase of \$14.0 million, or 1.4%. The growth in net sales was due primarily to greater shipments to the home improvement channel at ABL and increased shipments to the industrial and institutional channel at ASP. Consolidated gross profit margins increased to 41.3% of net sales in the six months ended February 29, 2004, from 40.4% reported in the year-ago period, due primarily to improvements in pricing, the mix of products sold, and the impact of initiatives to reduce product cost, partially offset by higher costs associated with certain raw materials and expenses associated with the consolidation of certain manufacturing facilities at ABL. Consolidated operating expenses increased slightly to 36.0% of net sales in the six months ended February 29, 2004, compared to 35.9% of net sales in the same period one year earlier. The increase was due primarily to higher corporate expenses, partially offset by the impact of programs to reduce operating expenses and improve efficiencies. Consolidated operating profit of \$53.0 million was \$7.3 million, or 16.0%, higher in the six months ended February 29, 2004 compared to the year-ago period primarily due to higher net sales and gross profit margin, partially offset by increased operating expenses. Consolidated operating profit margins were 5.3% of net sales in the six months ended February 29, 2004 compared to 4.6% reported in the prior year. Net income for the six months ended February 29, 2004 increased \$4.2 million, or 23.1%, to \$22.4 million from \$18.2 million reported in the first six months of fiscal 2003. The increase in net income resulted primarily from the increase in operating profit noted above, lower interest expense associated with the decrease in outstanding borrowings, partially offset by fewer gains on the sale of non-core assets. Diluted earnings per share in the first six months of 2004 was \$0.52 compared to \$0.44 reported in the first six months of 2003, an increase of 18.2%.

Acuity Brands Lighting

Net sales at ABL in the six months ended February 29, 2004 were \$760.4 million compared to \$751.5 million reported in the year-ago period, an increase of \$8.9 million, or 1.2%. The increase was due primarily to greater shipments of products to the home improvement channel and the impact of pricing initiatives. This was partially offset by a decrease in shipments to certain key commercial, industrial, and electric utility channels as a result of continued weak economic conditions.

Operating profit at ABL increased \$4.2 million, or 9.4%, to \$49.1 million in the six months ended February 29, 2004 from \$44.9 million reported in the prior year. Operating profit margins improved to 6.5% of net sales in the first six months of 2004 from 6.0% reported in the same period a year ago. The increase in operating profit and margins was due primarily to better pricing, favorable product mix, benefits from initiatives to reduce product costs and contain expenses, and a benefit related to the settlement of a patent infringement lawsuit during the second quarter of fiscal 2004. The improvement in operating profit was partially offset by higher costs associated with the consolidation of certain manufacturing facilities, freight expense, and employee-related expenses.

Acuity Specialty Products

Net sales at ASP in the six months ended February 29, 2004 were \$248.2 million compared to \$243.2 million reported in the year-ago period, representing an increase of \$5.0 million, or 2.1%. The increase in net sales was due primarily to greater shipments to institutional and industrial customers in both domestic and international markets, partially offset by the divestiture of a small product line during the first quarter of fiscal 2004. International sales were also favorably impacted by changes in exchange rates.

Operating profit at ASP in the six months ended February 29, 2004 increased to \$16.4 million from \$8.5 million reported in the year-ago period. Operating margins advanced to 6.6% of net sales from 3.5% of net sales a year ago. The improvement in operating profit and margin was due primarily to the higher sales noted above, the impact of price increases, the reduction of costs associated with new product introductions and logistics programs in the prior year, and lower general and administrative expenses.

Corporate

Corporate expenses were \$12.5 million in the six months ended February 29, 2004 compared to \$7.7 million in the year-ago period. The increase was primarily due to greater expense for Company-wide restricted stock incentives and other share-based programs, reflecting, in part, a greater mix of restricted stock compared to stock options used in the year-ago period, the appreciation in the Company's stock price during fiscal 2004, and an increase in the number of awards outstanding. Corporate expenses in 2004 also included expenditures to facilitate compliance with the Sarbanes-Oxley Act.

Other Expense (Income)

Other expense (income) for Acuity Brands consisted primarily of interest expense and other miscellaneous non-operating activity including gains or losses on the sale of assets and foreign currency transactions. Interest expense, net, was \$17.6 million, a decrease of \$1.6 million, or 8.5%, from the year-ago period. This decrease was due primarily to a reduction in outstanding debt. During the six

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months ended February 29, 2004, miscellaneous expense (income), net, included a pre-tax gain of approximately \$0.8 million related to the sale of a small product line at ASP and a pre-tax loss of approximately \$0.6 million related to the impairment of certain long-lived assets associated with the consolidation of certain manufacturing facilities at ABL. During the six months ended February 28, 2003, miscellaneous expense (income), net, primarily included a pre-tax gain of approximately \$0.8 million related to the sale of property, plant, and equipment, principally at ASP, and a pre-tax gain of approximately \$0.9 million related to the sale of certain non-core assets at ABL.

Stock Option Expense

The Company anticipated adopting certain provisions of Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation-Transition and Disclosure—An Amendment of FASB Statement No. 123*, in the first quarter of fiscal 2004, which would have required stock options to be expensed. In light of public communications from the Financial Accounting Standards Board, the Company elected to delay the recognition of expense related to stock options until a final standard is promulgated. The recognition of stock option expense was projected to reduce earnings in fiscal 2004 by approximately \$0.02 per share for each quarter beginning with the second quarter. See Note 2 of *Notes to Consolidated Financial Statements* contained in this Form 10-Q.

Outlook

Results for the first half of fiscal 2004 were impacted by soft demand and uncertainties that existed in the Company's key markets, particularly non-residential construction. It now appears that certain sectors of the economy are starting to show signs of renewed growth, and some economists are predicting modest growth in portions of the non-residential construction market starting in the second half of calendar year 2004. While the Company remains cautious about the potential benefit from such a rebound in its fiscal 2004, management now expects full-year earnings, adjusted for the delay in accounting for stock option expense noted above, to be in the middle to upper end of the range of \$1.31 to \$1.51 per share.

Critical Accounting Policies

Management's Discussion and Analysis of Financial Condition and Results of Operations addresses the financial condition and results of operations as reflected in the Company's *Consolidated Financial Statements*, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to inventory valuation; depreciation, amortization and the recoverability of long-lived assets, including intangible assets; medical, casualty, product warranty, and other reserves; litigation; and environmental matters. Management bases its estimates and judgments on its substantial historical experience and other relevant factors, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates. For a detailed discussion of significant accounting policies that may involve a higher degree of judgment, please refer to the Company's Form 10-K for the year ended August 31, 2003.

Cautionary Statement Regarding Forward-Looking Information

This filing contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, that involve risks and uncertainties. Consequently, actual results may differ materially from those indicated by the forward-looking statements. Statements made herein that may be considered forward-looking include statements that relate to future performance or results of the Company, including without limitation: (a) the Company's expectations regarding liquidity and availability under its financing arrangements to fund its operations, capital investments, profit improvement initiatives, debt payments, dividend payments, and required contributions into its pension plans; (b) planned spending of approximately \$50 million for new plant and equipment during 2004; (c) expected changes in total indebtedness (including the timing of the changes in total indebtedness); (d) future net sales and earnings per share (including the timing of the future revenue and earnings within fiscal 2004); and (e) expected increases in warranty expenses. A variety of risks and uncertainties could cause the Company's actual results to differ materially from the anticipated results or other expectations expressed in the Company's forward-looking statements. The risks and uncertainties include without limitation the following: (a) the uncertainty of general business and economic conditions, including the potential for a more severe slowdown in non-residential construction and other industrial markets, changes in interest rates, and fluctuations in commodity and raw material prices or foreign currency rates; (b) the Company's ability to realize the anticipated benefits of initiatives expected to reduce costs, improve profits, enhance customer service, increase manufacturing efficiency, reduce debt, and expand product offerings and brands in the market through a variety of channels; (c) the risk that the Company will be unable to execute its various initiatives within expected timeframes; (d) unexpected developments in the Company's legal and environmental matters, including the matter related to the operation of ASP's wastewater

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pretreatment plant and ASP's management of hazardous waste at a facility in Atlanta, Georgia; (e) the risk that projected future cash flows from operations are not realized; (f) the impact of competition; (g) unexpected changes in the Company's share price; and (h) unanticipated developments related to the product recall which commenced on March 10, 2004.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

General. Acuity Brands is exposed to market risks that may impact the *Consolidated Balance Sheets*, *Consolidated Statements of Income*, and *Consolidated Statements of Cash Flows* due primarily to changing interest rates and foreign exchange rates. The following discussion provides additional information regarding the market risks of Acuity Brands.

Interest Rates. Interest rate fluctuations expose the variable-rate debt of Acuity Brands to changes in interest expense and cash flows. The variable-rate debt of Acuity Brands, primarily short-term secured borrowings and amounts outstanding under the Company's term loan, amounted to \$77.6 million at February 29, 2004. Based on outstanding borrowings at quarter end, a 10% increase in market interest rates at February 29, 2004 would have resulted in additional annual after-tax interest expense of approximately \$0.1 million. A fluctuation in interest rates would not affect interest expense or cash flows related to the \$360.0 million publicly traded notes, Acuity Brands' primary fixed-rate debt. A 10% increase in market interest rates at February 29, 2004 would have decreased the fair value of these notes by approximately \$9.9 million. See Note 9 of the *Notes to Consolidated Financial Statements*, contained in this Form 10-Q, for additional information regarding the Company's long-term debt.

Foreign Exchange Rates. The majority of the net sales, expense, and capital purchases of Acuity Brands are transacted in U.S. dollars. Acuity Brands does not believe a 10% fluctuation in average foreign currency rates would have a material effect on its consolidated financial position or results of operations. However, during November 2003, the Company entered into certain foreign currency forward contracts to hedge its exposure to variability in exchange rates on certain anticipated intercompany transactions with a Canadian business unit. At February 29, 2004, the Company had foreign currency contracts outstanding with an aggregate notional amount of \$18.0 million. These contracts mature monthly in \$3.0 million increments. The fair value of these contracts represented an unrealized pre-tax gain of approximately \$0.3 million at February 29, 2004.

Item 4. Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to reasonably ensure that information required to be disclosed in the reports filed or submitted by the Company under the Securities Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's ("Commission") rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to reasonably ensure that information required to be disclosed by the Company in the reports filed under the Securities Exchange Act is accumulated and communicated to management, including the principal executive officer and principal financial officer as appropriate to allow timely decisions regarding required disclosure.

As required by Commission rules, the Company has evaluated the effectiveness of the design and operation of its disclosure controls and procedures as of February 29, 2004. This evaluation was carried out under the supervision and with the participation of management, including the principal executive officer and principal financial officer. Based on this evaluation, these officers have concluded that the design and operation of the Company's disclosure controls and procedures are effective at a reasonable assurance level. However, because all disclosure procedures must rely to some degree on actions or decisions made by employees throughout the organization, such as reporting of material events, the Company and its reporting officers believe that they cannot provide absolute assurance that all control issues and instances of fraud, if any, within the Company will be detected. Limitations within any control system, including the Company's control system, include faulty judgments in decision-making or simple errors or mistakes. In addition, controls can be circumvented by an individual, by collusion between two or more people, or by management override of the control. Because of these limitations, misstatements due to error or fraud may occur and may not be detected.

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that: (a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer; (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with appropriate authorizations of management and directors of the issuer; and (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the issuer's assets that could have a material effect on the financial statements. There were no significant changes to the Company's internal control structure over financial reporting during the second quarter of fiscal 2004 that materially affected, or are reasonably likely to affect materially, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Acuity Brands is subject to various legal claims arising in the normal course of business, including patent infringement and product liability claims. Based on information currently available, and except as described below, it is the opinion of management that the ultimate resolution of pending and threatened legal proceedings will not have a material adverse effect on the financial condition or results of operations of Acuity Brands. However, in the event of unexpected future developments, it is possible that the ultimate resolution of such matters, if unfavorable, could have a material adverse effect on the results of operations of Acuity Brands in future periods. Acuity Brands establishes reserves for legal claims when the costs associated with the claims become probable and can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher than the amounts reserved for such claims.

In August 2003, ASP received a grand jury subpoena from the United States Attorney for the Northern District of Georgia concerning the operation of ASP's wastewater pretreatment plant and ASP's management of hazardous waste at a facility in Atlanta, Georgia. The grand jury investigation appears to relate to the discharge of wastewater from the facility to the City of Atlanta's sanitary sewer system and ASP's practices in connection with the sampling of the facility's wastewater discharges for permitting purposes. ASP is cooperating with the investigation by the U.S. Attorney's Office and has completed the production of the required documents. The U.S. Attorney's Office investigation follows an inquiry by the City of Atlanta, which regulates the wastewater discharge at the facility. The Company has settled with the City of Atlanta all issues arising from the inquiry. As of February 29, 2004, the Company had reserved approximately \$2.0 million to cover various costs including off-site disposal, the estimated costs of resolution of proceedings with the U.S. Attorney's Office, and the estimated legal expenses to be incurred by the Company for these matters. The proceedings with the U.S. Attorney are at a preliminary stage, and developments in the investigation and the terms of any final settlement or adjudication of these matters could cause the Company to record additional charges in future periods.

Item 4. Submission of Matters to a Vote of Security Holders

The Company held its annual meeting of stockholders held on December 18, 2003. Complete results from this meeting are reported in Item 4 of Part II to the Company's Quarterly Report on Form 10-Q for the quarterly period ended November 30, 2003.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits are listed on the Index to Exhibits (page 23).

(b) During the three months ended February 29, 2004, the Company filed Current Reports on Form 8-K as follows: on December 16, 2003 under Item 5 thereof related to the Company's 2003 Annual Meeting of Stockholders, on December 18, 2003 furnished under item 12 thereof related to the Company's first quarter 2004 earnings release, and on January 21, 2004 under Item 5 thereof related to the Company's management succession plan.

SIGNATURES

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

ACUITY BRANDS, INC.
REGISTRANT

DATE: April 6, 2004

/s/ James S. Balloun

JAMES S. BALLOUN
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

DATE: April 6, 2004

/s/ Vernon J. Nagel

VERNON J. NAGEL
VICE CHAIRMAN AND CHIEF FINANCIAL OFFICER

INDEX TO EXHIBITS

EXHIBIT 3	(a) Restated Certificate of Incorporation of Acuity Brands, Inc.	Reference is made to Exhibit 3.1 to the registrant's Form 8-K as filed with the Commission on December 14, 2001, which is incorporated herein by reference.
	(b) Amended and Restated By-Laws of Acuity Brands, Inc.	Reference is made to Exhibit 3.2 to the registrant's Form 8-K as filed with the Commission on December 14, 2001, which is incorporated herein by reference.
EXHIBIT 10(i)A	(1) 5-Year Revolving Credit Agreement dated as of April 2, 2004 among Acuity Brands, Inc., the Subsidiary Borrowers from time to time parties hereto, the Lenders from time to time parties hereto, Bank One, NA (Main Office Chicago), as Administrative Agent, Wachovia Bank, N.A., as Syndication Agent and LaSalle Bank National Association and Key Bank National Association, as Co-Documentation Agents.	Filed with the Commission as part of this Form 10-Q.
EXHIBIT 10(iii)A	(1) Reimbursement Agreement.	Filed with the Commission as part of this Form 10-Q.
EXHIBIT 10(iii)B	(1) Severance Agreement between Acuity Brands, Inc. and James H. Heagle.	Reference is made to Exhibit 10(iii)A to the registrant's Quarterly Report on Form 10-Q for the period ended November 30, 2003.
EXHIBIT 31	(a) Certification of the Chief Executive Officer of the Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed with the Commission as part of this Form 10-Q.
	(b) Certification of the Chief Financial Officer of the Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed with the Commission as part of this Form 10-Q.
EXHIBIT 32	(a) Certification of the Chief Executive Officer of the Company pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Filed with the Commission as part of this Form 10-Q.
	(b) Certification of the Chief Financial Officer of the Company pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Filed with the Commission as part of this Form 10-Q.

5-YEAR REVOLVING CREDIT AGREEMENT

DATED AS OF APRIL 2, 2004

AMONG

ACUITY BRANDS, INC.,

**THE SUBSIDIARY BORROWERS
FROM TIME TO TIME PARTIES HERETO,**

THE LENDERS FROM TIME TO TIME PARTIES HERETO,

**BANK ONE, NA (MAIN OFFICE CHICAGO),
as Administrative Agent,**

**WACHOVIA BANK, N.A.
as Syndication Agent**

and

**LASALLE BANK NATIONAL ASSOCIATION and
KEY BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents**

**BANC ONE CAPITAL MARKETS, INC.,
as Lead Arranger and Sole Book Runner**

**SIDLEY AUSTIN BROWN & WOOD LLP
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603**

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EXHIBITS

- Exhibit A - Form of Opinion Letter
- Exhibit B - Form of Compliance Certificate
- Exhibit C - Form of Assignment Agreement
- Exhibit D - Form of Loan/Credit Related Money Transfer Instruction
- Exhibit E - Form of Promissory Note (if requested)
- Exhibit F - List of Closing Documents
- Exhibit G - Form of Guaranty
- Exhibit H - Form of Assumption Letter
- Exhibit I - Form of Commitment and Acceptance

SCHEDULES

Pricing Schedule

Commitment Schedule

- Schedule 1.1 - Subsidiary Borrowers
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- Schedule 6.13 - Existing Liens

5-YEAR REVOLVING CREDIT AGREEMENT

This 5-Year Revolving Credit Agreement, dated as of April 2, 2004, is among ACUITY BRANDS, INC., a Delaware corporation, ACUITY LIGHTING GROUP, INC., a Delaware corporation, ACUITY SPECIALTY PRODUCTS GROUP, INC., a Delaware corporation, and one or more other Subsidiary Borrowers from time to time parties hereto (whether now existing or hereafter formed), the institutions from time to time parties hereto as Lenders (whether by execution of this Agreement or an assignment pursuant to [Section 13.3](#)), BANK ONE, NA, a national banking association having its principal office in Chicago, Illinois, as Swing Line Lender, LC Issuer and Administrative Agent, WACHOVIA BANK, N.A., as Syndication Agent and LASALLE BANK NATIONAL ASSOCIATION and KEY BANK NATIONAL ASSOCIATION, as Co-Documentation Agents. The parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. **Certain Defined Terms.** As used in this Agreement:

“**Accounting Changes**” is defined in [Section 10.8](#) hereof.

“**Acquisition**” means any transaction, or any series of related transactions, consummated on or after the Closing Date, by which the Company or any of its Subsidiaries (i) acquires any going business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage of voting power) of the outstanding ownership interests of a partnership, limited liability company or any Person.

“**Administrative Agent**” means Bank One in its capacity as contractual representative of the Lenders pursuant to [Article XI](#), and not in its individual capacity as a Lender, and any successor Administrative Agent appointed pursuant to [Article XI](#).

“**Advance**” means a borrowing hereunder consisting of the aggregate amount of several Loans (i) made by some or all of the Lenders on the same Borrowing Date, or (ii) converted or continued by the Lenders on the same date of conversion or continuation, consisting, in either case, of the aggregate amount of the several Loans of the same Type and, in the case of Eurodollar Loans, for the same Interest Period. The term “Advance” shall include Swing Line Loans unless otherwise expressly provided.

“**Affected Lender**” is defined in [Section 2.20](#).

“**Affiliate**” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of twenty percent (20%) or more of any class of

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voting securities (or other voting interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of voting securities, by contract or otherwise.

“**Agent**” means any of the Administrative Agent, the Syndication Agent or a Co-Documentation Agent, as appropriate, and “**Agents**” means, collectively, the Administrative Agent, the Syndication Agent and the Co-Documentation Agents.

“**Aggregate Commitment**” means the aggregate of the Commitments of all the Lenders, as may be adjusted from time to time pursuant to the terms hereof. The initial Aggregate Commitment is Two Hundred Million and 00/100 Dollars (\$200,000,000).

“**Aggregate Outstanding Credit Exposure**” means, at any time, the aggregate of the Outstanding Credit Exposure of all the Lenders.

“**Agreement**” means this 5-Year Revolving Credit Agreement, as it may be amended, restated, supplemented or otherwise modified and as in effect from time to time.

“**Agreement Accounting Principles**” means generally accepted accounting principles as in effect in the United States from time to time, applied in a manner consistent with that used in preparing the financial statements of the Company referred to in Section 5.4; *provided, however*, that except as provided in Section 10.8, with respect to the calculation of financial ratios and other financial tests required by this Agreement, “**Agreement Accounting Principles**” means generally accepted accounting principles as in effect in the United States as of the Closing Date, applied in a manner consistent with that used in preparing the financial statements of the Company referred to in Section 5.4 hereof.

“**Alternate Base Rate**” means, for any day, a fluctuating rate of interest per annum equal to the higher of (i) the Prime Rate for such day and (ii) the sum of (a) the Federal Funds Effective Rate for such day and (b) one-half of one percent (0.5%) per annum.

“**Applicable Facility Fee Rate**” means, at any time, the percentage rate per annum at which Facility Fees are accruing on the Aggregate Commitment at such time as set forth in the Pricing Schedule.

“**Applicable Margin**” means, with respect to Advances of any Type at any time, the percentage rate per annum which is applicable at such time with respect to Advances of such Type as set forth in the Pricing Schedule.

“**Applicable Utilization Fee Rate**” means, at any time, the percentage rate per annum at which Utilization Fees accrue on the Aggregate Outstanding Credit Exposure at such time as set forth in the Pricing Schedule.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Arranger**” means Banc One Capital Markets, Inc., a Delaware corporation, and its successors, in its capacity as Lead Arranger and Sole Book Runner.

“**Article**” means an article of this Agreement unless another document is specifically referenced.

“**Assignment Agreement**” is defined in Section 13.3.1.

“**Assumption Letter**” means a letter of a Subsidiary of the Company addressed to the Administrative Agent and the Lenders, and acknowledged by the Administrative Agent, in substantially the form of Exhibit H hereto, pursuant to which such Subsidiary agrees to become a “Subsidiary Borrower” and agrees to be bound by the terms and conditions hereof.

“**Authorized Officer**” means any of the chief executive officer, president, chief operating officer, chief financial officer, or treasurer of the Company, acting singly.

“**Available Aggregate Commitment**” means, at any time, the Aggregate Commitment then in effect minus the Aggregate Outstanding Credit Exposure at such time.

“**Bank One**” means Bank One, NA, a national banking association having its principal office in Chicago, Illinois, in its individual capacity, and its successors.

“**Borrower**” means, as applicable, any of the Company or any of the Subsidiary Borrowers, together with their respective permitted successors and assigns, and “**Borrowers**” means, collectively, the Company and the Subsidiary Borrowers.

“**Borrowing Date**” means a date on which an Advance is made hereunder.

“**Borrowing Notice**” is defined in Section 2.9.1.

“**Business Day**” means (i) with respect to any borrowing, payment or rate selection of Eurodollar Advances, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago, Illinois for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in Dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago, Illinois for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“**Buying Lender**” is defined in Section 2.23(ii).

“**Capitalized Lease**” of a Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with Agreement Accounting Principles.

“**Capitalized Lease Obligations**” of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with Agreement Accounting Principles.

“**Capital Stock**” means (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership, partnership interests (whether general or limited) and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“**Cash Equivalent Investments**” means, as to any Person, (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any investment grade commercial bank having, or which is the principal banking subsidiary of an investment grade bank holding company organized under the laws of the United States, any State thereof, the District of Columbia or any foreign jurisdiction having capital, surplus and undivided profits aggregating in excess of \$500,000,000, with maturities of not more than one year from the date of acquisition by such Person, (iii) repurchase obligations with a term of not more than ninety (90) days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, *provided* that such repurchase obligations are secured by a first priority security interest in such underlying securities which have, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations, (iv) commercial paper issued by any Person incorporated in the United States rated at least A-1 by S&P or P-1 by Moody’s and in each case maturing not more than 270 days after the date of acquisition by such Person, (v) investments in money market funds substantially all of the assets of which are comprised of securities of the types described in clauses (i) through (iv) above, and (vi) demand deposit accounts maintained in the ordinary course of business.

“**Change**” is defined in Section 3.2.

“**Change in Control**” means (i) the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of thirty percent (30%) or more of the outstanding shares of voting stock of the Company; or (ii) the majority of the Board of Directors of the Company fails to consist of Continuing Directors.

“**Closing Date**” means April 2, 2004.

“**Co-Documentation Agent**” means each of LaSalle Bank National Association and Key Bank National Association in its capacity as a co-documentation agent for the Lenders pursuant to Article XI, and not in its individual capacity as a Lender, and any successor Co-Documentation Agent appointed pursuant to Article XI.

“**Code**” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time, and any rule or regulation issued thereunder.

“**Collateral Shortfall Amount**” means, as of any date of determination, an amount equal to the difference of (x) the amount of LC Obligations at such time, less (y) the amount on deposit

in the Facility LC Collateral Account at such time which is free and clear of all rights and claims of third parties and has not been applied against the Obligations in accordance with the terms and conditions of this Agreement.

“**Combined Balance Sheets**” means the audited combined balance sheets of the Company and its Subsidiaries as of August 31, 2003.

“**Commitment**” means, for each Lender, the obligation of such Lender to make Revolving Loans to, and participate in Facility LCs issued upon the application of, a Borrower in an aggregate amount not exceeding the amount set forth on the Commitment Schedule or in an Assignment Agreement executed pursuant to Section 13.3, as it may be modified as a result of any assignment that has become effective pursuant to Section 13.3.2 or as otherwise modified from time to time pursuant to the terms hereof.

“**Commitment Increase Notice**” is defined in Section 2.23(i).

“**Commitment Schedule**” means the Schedule identifying each Lender’s Commitment as of the Closing Date attached hereto and identified as such.

“**Company**” means Acuity Brands, Inc., a Delaware corporation, and its permitted successors and assigns (including, without limitation, a debtor-in-possession on its behalf).

“**Consolidated Net Income**” means, with reference to any period, the net after-tax income (or loss) of the Company and its Subsidiaries calculated on a consolidated basis for such period determined in accordance with Agreement Accounting Principles, excluding minority interests and including only dividends actually received by the Company from any entity which is not a Subsidiary.

“**Consolidated Net Worth**” means at any time the consolidated stockholders’ equity of the Company and its Subsidiaries calculated on a consolidated basis as of such time in accordance with Agreement Accounting Principles.

“**Consolidated Total Assets**” means the total amount of all assets of the Company and its consolidated Subsidiaries, and including amounts attributable to minority interests in Affiliates of the Company to the extent deducted in calculating the Consolidated Total Assets of the Company and its Subsidiaries but only to the extent such Affiliate shall be a Guarantor hereunder, calculated on a consolidated basis as of such time in accordance with Agreement Accounting Principles.

“**Continuing Director**” means, with respect to any Person as of any date of determination, any member of the board of directors of such Person who (i) was a member of such board of directors on the Closing Date, or (ii) was nominated for election or elected to such board of directors with the approval of the required majority of the Continuing Directors who were members of such board at the time of such nomination or election; *provided* that any individual who is so elected or nominated in connection with a merger, consolidation, acquisition or similar transaction shall not be a Continuing Director unless such individual was a Continuing Director prior thereto.

“**Contractual Obligation**” means, for any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking under which such Person is obligated or by which it or any of the property owned by it is bound.

“**Controlled Group**” means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with the Company or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“**Conversion/Continuation Notice**” is defined in Section 2.10.

“**Credit Extension**” means the making of an Advance or the issuance of a Facility LC hereunder.

“**Credit Extension Date**” means the Borrowing Date for an Advance or the issuance date for a Facility LC.

“**Default**” means an event described in Article VII.

“**Disqualified Stock**” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the Facility Termination Date.

“**DOL**” means the United States Department of Labor and any successor department or agency.

“**Dollars**” and “**\$**” means the lawful currency of the United States of America.

“**Domestic Subsidiary**” means a Subsidiary of the Company organized under the laws of a jurisdiction located in the United States of America.

“**EBIT**” means, for any period for the Company and its consolidated Subsidiaries, the sum of the amounts for such period, without duplication, calculated in each case in accordance with Agreement Accounting Principles, of (i) Net Income, plus (ii) Interest Expense to the extent deducted in computing Net Income, plus (iii) charges against income for foreign, federal, state and local taxes to the extent deducted in computing Net Income, plus (iv) any other non-recurring non-cash charges to the extent deducted in computing Net Income, plus (v) non-cash expenses associated with the Company’s stock compensation programs, plus (vi) any extraordinary non-recurring cash charges not to exceed \$15,000,000 during the term of this Agreement to the extent deducted in computing Net Income, and minus (vii) any non-recurring non-cash credits to the extent added in computing Net Income.

“**EBITDA**” means, for any period for the Company and its consolidated Subsidiaries, the sum of the amounts for such period, without duplication, calculated in each case in accordance with Agreement Accounting Principles, of (i) EBIT, plus (ii) depreciation expense to the extent deducted in computing Net Income, plus (iii) amortization expense, including, without

limitation, amortization of goodwill and other intangible assets to the extent deducted in computing Net Income.

“**Effective Commitment Amount**” is defined in Section 2.23(i).

“**Environmental Laws**” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“**Eurodollar Advance**” means an Advance which, except as otherwise provided in Section 2.12, bears interest at a Eurodollar Rate requested by a Borrower pursuant to Sections 2.9 and 2.10.

“**Eurodollar Base Rate**” means, with respect to a Eurodollar Advance for the relevant Interest Period, the applicable British Bankers’ Association Interest Settlement Rate for deposits in Dollars appearing on Reuters Screen FRBD as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, and having a maturity equal to such Interest Period, *provided* that, (i) if Reuters Screen FRBD is not available to the Administrative Agent for any reason, the applicable Eurodollar Base Rate for the relevant Interest Period shall instead be the applicable British Bankers’ Association Interest Settlement Rate for deposits in Dollars as reported as of 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period by any other generally recognized financial information service selected by the Administrative Agent, and having a maturity equal to such Interest Period, and (ii) if no such British Bankers’ Association Interest Settlement Rate is available to the Administrative Agent, the applicable Eurodollar Base Rate for the relevant Interest Period shall instead be the rate determined by the Administrative Agent to be the rate at which Bank One or one of its affiliate banks offers to place deposits in Dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period, in the approximate amount of Bank One’s relevant Eurodollar Loan and having a maturity equal to such Interest Period.

“**Eurodollar Loan**” means a Loan which, except as otherwise provided in Section 2.12, bears interest at a Eurodollar Rate requested by a Borrower pursuant to Sections 2.9 and 2.10.

“**Eurodollar Rate**” means, with respect to a Eurodollar Advance for the relevant Interest Period, the sum of (i) the quotient of (a) the Eurodollar Base Rate applicable to such Interest Period, *divided by* (b) one *minus* the Reserve Requirement (expressed as a decimal) applicable to

such Interest Period, *plus* (ii) the then Applicable Margin, changing as and when the Applicable Margin changes.

“**Excluded Taxes**” means, in the case of each Lender or applicable Lending Installation and each Agent, taxes imposed on its overall net income, and franchise or branch office taxes imposed on it, by (i) the jurisdiction under the laws of which such Lender or Agent is incorporated or organized or any political combination or subdivision or taxing authority thereof or (ii) the jurisdiction in which such Agent’s or Lender’s principal executive office or such Lender’s applicable Lending Installation is located or in which, other than as a result of the transaction evidenced by this Agreement, such Agent or Lender otherwise is, or at any time was, engaged in business (or any political combination or subdivision or taxing authority thereof).

“**Exhibit**” refers to an exhibit to this Agreement, unless another document is specifically referenced.

“**Existing Credit Agreements**” means (i) that certain 3-Year Revolving Credit Agreement dated as of April 8, 2002 among the initial Borrowers, the lenders parties thereto, and Bank One, as administrative agent, as the same has been amended or otherwise modified from time to time and (ii) that certain Amended and Restated 364-Day Revolving Credit Agreement dated as of April 4, 2003 among the initial Borrowers, the lenders parties thereto, and Bank One as administrative agent, as the same has been amended or otherwise modified from time to time.

“**Facility Fee**” is defined in Section 2.6.1.

“**Facility LC**” is defined in Section 2.21.1.

“**Facility LC Application**” is defined in Section 2.21.3.

“**Facility LC Collateral Account**” is defined in Section 2.21.11.

“**Facility Termination Date**” means January 31, 2009.

“**Federal Funds Effective Rate**” means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Chicago time) on such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

“**Financial Contract**” of a Person means (i) any exchange-traded or over-the-counter futures, forward, swap or option contract or other financial instrument with similar characteristics or (ii) any agreements, devices or arrangements providing for payments related to fluctuations of interest rates, exchange rates, forward rates or commodity prices, including, but not limited to, interest rate swap or exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency, interest rate options puts or warrants.

“**Floating Rate**” means, for any day, a rate per annum equal to the sum of (i) Alternate Base Rate for such day, changing when and as the Alternate Base Rate changes plus (ii) the then Applicable Margin, changing as and when the Applicable Margin changes.

“**Floating Rate Advance**” means an Advance which, except as otherwise provided in Section 2.12, bears interest at the Floating Rate.

“**Floating Rate Loan**” means a Loan or portion thereof, which, except as otherwise provided in Section 2.12, bears interest at the Floating Rate.

“**Foreign Pension Plan**” means any employee benefit plan as described in Section 3(3) of ERISA for which the Company or any member of its Controlled Group is a sponsor or administrator and which (i) is maintained or contributed to for the benefit of employees of the Company, any of its respective Subsidiaries or any member of its Controlled Group, (ii) is not covered by ERISA pursuant to Section 4(b)(4) of ERISA, and (iii) under applicable local law, is required to be funded through a trust or other funding vehicle.

“**Foreign Subsidiary**” means a Subsidiary of the Company which is not a Domestic Subsidiary.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**Guarantor**” means the Company and each Material Subsidiary of the Company (other than an SPV) that is a Domestic Subsidiary as of the Closing Date and each other Subsidiary that has become a guarantor of the Obligations hereunder in accordance with the terms of Section 6.10.

“**Guaranty**” means that certain Guaranty (and any and all supplements thereto) executed from time to time by each Guarantor (other than the Company) in favor of the Administrative Agent for the benefit of itself and the Lenders, in substantially the form of Exhibit G attached hereto, as amended, restated, supplemented or otherwise modified from time to time.

“**Indebtedness**” of a Person means, without duplication, (a) Indebtedness For Borrowed Money and (b) any other obligation or other financial accommodation which in accordance with Agreement Accounting Principles would be shown as a liability on the consolidated balance sheet of such Person (other than current accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade).

“**Indebtedness For Borrowed Money**” of a Person means, without duplication, (a) the obligations of such Person (i) for borrowed money or which has been incurred in connection with the acquisition of property or assets (other than current accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade), (ii) under or with respect to notes payable and drafts accepted which represent extensions of credit (whether or not representing obligations for borrowed money) to such Person, (iii) constituting reimbursement obligations with respect to letters of credit issued for the account of such Person or (iv) for the deferred purchase price of property or services (other than current accounts

payable arising in the ordinary course of such Person's business payable on terms customary in the trade), (b) the Indebtedness For Borrowed Money of others, whether or not assumed, secured by Liens on property of such Person or payable out of the proceeds of, or production from, property or assets now or hereafter owned or acquired by such Person, (c) the Capitalized Lease Obligations of such Person, (d) the obligations of such Person under guaranties by such Person of any Indebtedness For Borrowed Money (other than obligations for borrowed money incurred to finance the purchase of property leased to such Person pursuant to a Capitalized Lease of such Person) of any other Person, (e) all Receivable Facility Attributed Indebtedness of such Person, (f) all Off-Balance Sheet Liabilities of such Person, and (g) all Disqualified Stock.

"Interest Expense" means, for any period for any group of Persons, the total gross interest expense of such group of Persons, whether paid or accrued, including, without duplication, the interest component of Capitalized Leases, commitment and letter of credit fees, the discount or implied interest component of Off-Balance Sheet Liabilities, capitalized interest expense, pay-in-kind interest expense, amortization of debt discount and net payments (if any) pursuant to Financial Contracts relating to interest rate protection, all as determined on a consolidated basis in conformity with Agreement Accounting Principles.

"Interest Expense Coverage Ratio" is defined in [Section 6.18.2](#).

"Interest Period" means, with respect to a Eurodollar Advance, a period of seven days or one, two, three or six months or such other period agreed to by the Lenders and the Borrowers, commencing on a Business Day selected by the applicable Borrower pursuant to this Agreement. Such Interest Period shall end on but exclude the day which corresponds numerically to such date seven days or one, two, three or six months or such other agreed upon period thereafter, *provided, however*, that if there is no such numerically corresponding day in such seventh day or next, second, third or sixth succeeding month or such other succeeding period, such Interest Period shall end on the last Business Day of such seventh day or next, second, third or sixth succeeding month or such other succeeding period. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, *provided, however*, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

"IRS" means the United States Internal Revenue Service and any successor agency.

"LC Fee" is defined in [Section 2.21.4](#).

"LC Issuer" means Bank One (or any Affiliate of Bank One designated by Bank One) or any of the other Lenders, as applicable, in its respective capacity as issuer of Facility LCs hereunder.

"LC Obligations" means, at any time, the sum, without duplication, of (i) the aggregate undrawn stated amount of all Facility LCs outstanding at such time plus (ii) the aggregate unpaid amount at such time of all Reimbursement Obligations.

"LC Payment Date" is defined in [Section 2.21.5](#).

“**Lenders**” means the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns. Unless otherwise specified, the term “Lender” includes Bank One in its capacity as Swing Line Lender.

“**Lender Increase Notice**” is defined in Section 2.23(i).

“**Lending Installation**” means, with respect to a Lender or the Agents, the office, branch, subsidiary or affiliate of such Lender or Agent listed on the signature pages hereof, or on the administrative information sheets provided to the Administrative Agent in connection herewith, or on a Schedule or otherwise selected by such Lender or Agent pursuant to Section 2.18.

“**Leverage Ratio**” is defined in Section 6.18.1.

“**Lien**” means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement, and, in the case of stock, stockholders agreements, voting trust agreements and all similar arrangements).

“**Loan**” means a Revolving Loan or a Swing Line Loan, as applicable.

“**Loan Documents**” means this Agreement, the Facility LC Applications, the Guaranty, each Assumption Letter executed hereunder, and all other documents, instruments, notes (including any Notes issued pursuant to Section 2.14 (if requested)) and agreements executed in connection herewith or therewith or contemplated hereby or thereby, as the same may be amended, restated or otherwise modified and in effect from time to time.

“**Material Adverse Effect**” means a material adverse effect on (i) the business, financial condition, operations or properties of the Company and its Subsidiaries taken as a whole, (ii) the ability of the Company or any of its Subsidiaries to perform its respective obligations under the Loan Documents to which it is a party, or (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Agents, the LC Issuers or the Lenders thereunder.

“**Material Indebtedness**” is defined in Section 7.5.

“**Material Subsidiary**” means each Borrower (other than the Company) and any other Subsidiary of the Company that at any time has (i) assets with a total book value equal to or greater than five percent (5%) of the aggregate book value of the Consolidated Total Assets of the Company and its Subsidiaries or (ii) Consolidated Net Worth that is equal to or greater than five percent (5%) of the Consolidated Net Worth of the Company and its Subsidiaries, or (iii) assets that contributed five percent (5%) or more of the Company’s Consolidated Net Income, in each case as reported in the most recent annual audited financial statements delivered to the Lenders pursuant to Section 6.1(i) (or, prior to the delivery of the first of such annual audited financial statements, as reported in the Combined Balance Sheets).

“**Modify**” and “**Modification**” are defined in Section 2.21.1.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Multiemployer Plan**” means a Plan maintained pursuant to a collective bargaining agreement or any other arrangement to which the Company or any member of its Controlled Group is a party to which more than one employer is obligated to make contributions.

“**Net Income**” means, for any period for any group of Persons, the net earnings (or loss) after taxes of such group of Persons on a consolidated basis for such period taken as a single accounting period determined in conformity with Agreement Accounting Principles.

“**Non-U.S. Lender**” is defined in Section 3.5(iv).

“**Note**” is defined in Section 2.14.

“**Obligations**” means all Loans, Reimbursement Obligations, advances, debts, liabilities, obligations, covenants and duties owing by the Borrowers to any of the Agents, any LC Issuer, any Lender, the Arranger, any affiliate of the Agents, any LC Issuer, or any Lender, the Arranger, or any indemnitee under the provisions of Section 10.6 or any other provisions of the Loan Documents, in each case of any kind or nature, present or future, arising under this Agreement or any other Loan Document, whether or not evidenced by any note, guaranty or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, foreign exchange risk, guaranty, 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. The term includes, without limitation, all interest, charges, expenses, fees, attorneys’ fees and disbursements, paralegals’ fees (in each case whether or not allowed), and any other sum chargeable to the Company or any of its Subsidiaries under this Agreement or any other Loan Document.

“**Off-Balance Sheet Liability**” of a Person means (i) Receivables Facility Attributed Indebtedness and any repurchase obligation or liability of such Person or any of its Subsidiaries with respect to Receivables or notes receivable sold by such Person or any of its Subsidiaries (calculated to include the unrecovered investment of purchasers or transferees of Receivables or any other obligation of the Company or such transferor to purchasers/transferees of interests in Receivables or notes receivable or the agent for such purchasers/transferees), (ii) any liability under any sale and leaseback transaction which is not a Capitalized Lease, other than any such transactions involving the sale of assets not in excess of \$5,000,000 in the aggregate, (iii) any liability under any financing lease or Synthetic Lease or “tax ownership operating lease” transaction entered into by such Person, including any Synthetic Lease Obligations, or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheets of such Person, but excluding from this clause (iv) Operating Leases.

“**Operating Lease**” of a Person means any lease of Property (other than a Capitalized Lease) by such Person as lessee which has an original term (including any required renewals and any renewals effective at the option of the lessor) of one year or more.

“**Originator**” means the Company and/or any of its Subsidiaries in their respective capacities as parties to any Receivables Purchase Documents, as sellers or transferors of any Receivables and Related Security in connection with a Permitted Receivables Transfer.

“**Other Taxes**” is defined in Section 3.5(ii).

“**Outstanding Credit Exposure**” means, as to any Lender at any time, the sum of (i) the aggregate principal amount of its Revolving Loans outstanding at such time, *plus* (ii) an amount equal to its Pro Rata Share of the obligations to purchase participations in Swing Line Loans, *plus* (iii) an amount equal to its Pro Rata Share of the LC Obligations at such time.

“**Participants**” is defined in Section 13.2.1.

“**Payment Date**” means the last day of each March, June, September and December and the Facility Termination Date.

“**PBGC**” means the Pension Benefit Guaranty Corporation, or any successor thereto.

“**Performance LC**” means a Facility LC that is a documentary letter of credit which is drawable upon presentation of documents evidencing the sale or shipment of goods purchased by the Company or a Subsidiary in the ordinary course of business.

“**Permitted Acquisition**” is defined in Section 6.12.2.

“**Permitted Liens**” means the Liens expressly permitted under clauses (i) through (xy) of Section 6.13.

“**Permitted Receivables Transfer**” means (i) a sale or other transfer by an Originator to a SPV of Receivables and Related Security for fair market value and without recourse (except for limited recourse typical of such structured finance transactions), and/or (ii) a sale or other transfer (including the grant of Liens) by a SPV to (a) purchasers of, lenders on or other investors in such Receivables and Related Security (or interests therein) or (b) any other Person (including a SPV) in a transaction in which purchasers or other investors purchase or are otherwise transferred such Receivables and Related Security (or interests therein including Liens), in each case pursuant to and in accordance with the terms of the Receivables Purchase Documents.

“**Permitted Refinancing Indebtedness**” means any replacement, renewal, refinancing or extension of any Indebtedness permitted by this Agreement that (i) does not exceed the aggregate principal amount (plus accrued interest and any applicable premium and associated fees and expenses) of the Indebtedness being replaced, renewed, refinanced or extended, (ii) does not have a Weighted Average Life to Maturity at the time of such replacement, renewal, refinancing or extension that is less than the Weighted Average Life to Maturity of the Indebtedness being replaced, renewed, refinanced or extended, and (iii) does not rank at the time of such replacement, renewal, refinancing or extension senior to the Indebtedness being replaced, renewed, refinanced or extended.

“**Person**” means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

“**Plan**” means an employee benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code as to which the Company or any member of its Controlled Group may have any liability.

“**Pricing Schedule**” means the Schedule identifying the Applicable Margin, Applicable Facility Fee Rate and Applicable Utilization Rate attached hereto identified as such.

“**Prime Rate**” means a rate per annum equal to the prime rate of interest announced from time to time by Bank One or its parent (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

“**Property**” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

“**Proposed New Lender**” is defined in [Section 2.23\(i\)](#).

“**Pro Rata Share**” means, with respect to a Lender, a portion equal to a fraction the numerator of which is such Lender’s Commitment at such time (in each case, as adjusted from time to time in accordance with the provisions of this Agreement) and the denominator of which is the Aggregate Commitment at such time, or, if the Aggregate Commitment has been terminated, a fraction the numerator of which is such Lender’s Outstanding Credit Exposure at such time and the denominator of which is the sum of the Aggregate Outstanding Credit Exposure at such time.

“**Purchase Price**” means the total consideration and other amounts payable in connection with any Acquisition, including, without limitation, any portion of the consideration payable in cash, all Indebtedness, liabilities and contingent obligations incurred or assumed in connection with such Acquisition and all transaction costs and expenses incurred in connection with such Acquisition, but exclusive of the value of any Capital Stock or other equity interests of the Company or any Subsidiary issued as consideration for such Acquisition.

“**Purchasers**” is defined in [Section 13.3.1](#).

“**Receivable(s)**” means and includes all of applicable Originator’s or SPV’s presently existing and hereafter arising or acquired accounts, accounts receivable, and all present and future rights of such Originator or SPV, as applicable, to payment for goods sold or leased or for services rendered (except those evidenced by instruments or chattel paper), whether or not they have been earned by performance, and all rights in any merchandise or goods which any of the same may represent, and all rights, title, security, contracts, books and records, and guaranties with respect to each of the foregoing, including, without limitation, any right of stoppage in transit.

“Receivables and Related Security” means the Receivables and the related security and collections with respect thereto which are sold or transferred by any Originator or SPV in connection with any Permitted Receivables Transfer.

“Receivables Facility Attributed Indebtedness” means the amount of obligations outstanding under a receivables purchase facility on any date of determination that would be characterized as principal if such facility were structured as a secured lending transaction rather than as a purchase.

“Receivables Facility Financing Costs” means such portion of the cash fees, service charges, and other costs, as well as all collections or other amounts retained by purchasers of receivables pursuant to a receivables purchase facility, which are in excess of amounts paid to the Company and its consolidated Subsidiaries under any receivables purchase facility for the purchase of receivables pursuant to such facility and are the equivalent of the interest component of the financing if the transaction were characterized as an on-balance sheet transaction.

“Receivables Purchase Documents” means any series of receivables purchase or sale, credit or servicing agreements generally consistent with terms contained in comparable structured finance transactions pursuant to which an Originator or Originators sell or transfer to SPVs all of their respective right, title and interest in and to certain Receivables and Related Security for further sale or transfer (or granting of Liens) to other purchasers of or investors in such assets or interests therein (and the other documents, instruments and agreements executed in connection therewith), as any such agreements may be amended, restated, supplemented or otherwise modified from time to time, or any replacement or substitution therefor.

“Receivables Purchase Financing” means any financing consisting of a securitization facility made available to the Company or any of its consolidated Subsidiaries, whereby the Receivables and Related Security (or interests therein) of the Originators are transferred to one or more SPVs, and thereafter to certain investors (or are used as collateral to enable one or more SPVs to obtain loans from certain investors), pursuant to the terms and conditions of the Receivables Purchase Documents.

“Redeemable Preferred Stock” means, for any Person, any preferred stock issued by such Person which is at any time prior to the Facility Termination Date either (i) mandatorily redeemable (by required sinking fund or similar payments or otherwise) or (ii) redeemable at the option of the holder thereof.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

“Regulation T” means Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by and to brokers and dealers of securities for the purpose of purchasing or carrying margin stock (as defined therein).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks, non-banks and non-broker lenders for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by foreign lenders for the purpose of purchasing or carrying margin stock (as defined therein).

“Reimbursement Obligations” means with respect to any LC Issuer, at any time, the aggregate of all obligations of the Borrowers then outstanding under [Section 2.21](#) to reimburse such LC Issuer for amounts paid by such LC Issuer in respect of any one or more drawings under Facility LCs issued by such LC Issuer; or, as the context may require, all such Reimbursement Obligations then outstanding to reimburse all of the LC Issuers.

“Reportable Event” means a reportable event, as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC has by regulation or otherwise waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event, *provided, however*, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“Required Lenders” means Lenders in the aggregate having fifty-one percent (51%) or more of the Aggregate Commitment or, if the Aggregate Commitment has been terminated, Lenders in the aggregate holding fifty-one percent (51%) or more of the Aggregate Outstanding Credit Exposure.

“Reserve Requirement” means, with respect to an Interest Period, the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D on “Eurocurrency liabilities” (as defined in Regulation D).

“Revolving Loan” means, with respect to a Lender, such Lender’s loan made pursuant to its commitment to lend set forth in [Section 2.1](#) (and any conversion or continuation thereof).

“Risk Based Capital Guidelines” is defined in [Section 3.2](#).

“S&P” means Standard and Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Schedule” refers to a specific schedule to this Agreement, unless another document is specifically referenced.

“Section” means a numbered section of this Agreement, unless another document is specifically referenced.

“**Selling Lender**” is defined in Section 2.23(ii).

“**Single Employer Plan**” means a Plan maintained by the Company or any member of its Controlled Group for employees of the Company or any member of its Controlled Group.

“**Solvent**” means, when used with respect to any Person, that at the time of determination:

- (i) the fair value of its assets (both at fair valuation and at present fair saleable value) is equal to or in excess of the total amount of its liabilities, including, without limitation, contingent liabilities; and
- (ii) it is then able and expects to be able to pay its debts as they mature; and
- (iii) it has capital sufficient to carry on its business as conducted and as proposed to be conducted.

With respect to contingent liabilities (such as litigation, guarantees and pension plan liabilities), such liabilities shall be computed at the amount which, in light of all the facts and circumstances existing at the time, represent the amount which can be reasonably be expected to become an actual or matured liability.

“**SPV**” means any special purpose entity established for the purpose of purchasing receivables in connection with a Receivables Purchase Financing permitted under the terms of this Agreement.

“**Standby LC**” means any Facility LC other than a Performance LC.

“**Stockholders’ Equity**” means, at any time, the shareholders’ equity of the Company and its consolidated Subsidiaries, as set forth or reflected on the most recent consolidated balance sheet of the Company and its consolidated Subsidiaries delivered pursuant to Section 6.1(i) and (ii), as applicable, but excluding any Redeemable Preferred Stock of the Company or any of its consolidated Subsidiaries.

“**Subsidiary**” of a Person means (i) any corporation more than fifty percent (50%) of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than fifty percent (50%) of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly *provided*, all references herein to a “Subsidiary” shall mean a Subsidiary of the Company.

“**Subsidiary Borrower**” means each of the Company’s Subsidiaries listed on Schedule 1.1, and any other Subsidiaries of the Company duly designated by the Company pursuant to Section 2.22 to request Credit Extensions hereunder, which Subsidiary shall have delivered to the Administrative Agent an Assumption Letter in accordance with Section 2.22 and such other documents as may be required pursuant to this Agreement, in each case, together with its

respective successors and assigns, including a debtor-in-possession on behalf of such Subsidiary Borrower.

“**Substantial Portion**” means, with respect to the Property of the Company and its Subsidiaries, Property which (i) represents more than twenty percent (20%) of the consolidated assets of the Company and its Subsidiaries as reflected in the consolidated financial statements of the Company and its Subsidiaries as at the end of the fiscal quarter ending immediately prior to the date on which such determination is made, or (ii) is responsible for providing more than twenty percent (20%) of the Consolidated Net Income of the Company and its Subsidiaries as reflected in the financial statements for the four fiscal quarter period ending immediately prior to the date on which such determination is made.

“**Swing Line Borrowing Notice**” is defined in [Section 2.2.2](#).

“**Swing Line Commitment**” means the obligation of the Swing Line Lender to make Swing Line Loans up to a maximum principal amount of \$20,000,000 at any one time outstanding.

“**Swing Line Lender**” means Bank One or such other Lender which may succeed to its rights and obligations as Swing Line Lender pursuant to the terms of this Agreement.

“**Swing Line Loan**” means a Loan made available to the Borrowers by the Swing Line Lender pursuant to [Section 2.2](#).

“**Syndication Agent**” means Wachovia Bank, N.A. in its capacity as the syndication agent for the Lenders pursuant to [Article XI](#), and not in its individual capacity as a Lender, and any successor Syndication Agent appointed pursuant to [Article XI](#).

“**Synthetic Lease**” means any so-called “synthetic”, off-balance sheet or tax retention lease, or any other agreement for the use or possession of property creating obligations that are not treated as a capital lease under Agreement Accounting Principles, but that is treated as a financing under the Code.

“**Synthetic Lease Obligations**” means, collectively, the payment obligations of the Company or any of its Subsidiaries pursuant to a Synthetic Lease.

“**Taxes**” means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but *excluding* Excluded Taxes.

“**Transferee**” is defined in [Section 13.4](#).

“**Type**” means, with respect to any Advance, its nature as a Floating Rate Advance or a Eurodollar Advance.

“**Unfunded Liabilities**” means the amount (if any) by which the present value of all vested and unvested accrued benefits under all Single Employer Plans exceeds the fair market value of all such Plan assets allocable to such benefits, all determined as of the then most recent

valuation date for such Plans using PBGC actuarial assumptions for single employer plan terminations.

“**Unmatured Default**” means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

“**Utilization Fee**” is defined in Section 2.6.2.

“**Weighted Average Life to Maturity**” means when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by (ii) the then outstanding principal amount of such Indebtedness.

“**Wholly-Owned Subsidiary**” of a Person means (i) any Subsidiary all of the outstanding voting securities of which shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person, or (ii) any partnership, limited liability company, association, joint venture or similar business organization 100% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled; *provided* that in the case of clause (i) or (ii) above, there shall be excluded (x) directors’ qualifying shares, (y) nominal ownership interests in Foreign Subsidiaries required to be held by third parties under the laws of the foreign jurisdiction in which such Foreign Subsidiary is organized, or (z) Disqualified Stock or Redeemable Preferred Stock.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

Any accounting terms used in this Agreement which are not specifically defined herein shall have the meanings customarily given them in accordance with Agreement Accounting Principles.

1.2. **References.** Any references to the Company’s Subsidiaries shall not in any way be construed as consent by the Administrative Agent or any Lender to the establishment, maintenance or acquisition of any Subsidiary, except as may otherwise be permitted hereunder.

1.3. **Supplemental Disclosure.** At any time at the reasonable request of the Administrative Agent (which shall not be done more frequently than on a quarterly basis in the absence of a Default) and at such additional times as the Company determines, the Company shall supplement each schedule or representation herein or in the other Loan Documents with respect to any matter hereafter arising which, if existing or occurring at the Closing Date, would have been required to be set forth as an exception to such representation or which is necessary to correct any information in such representation which has been rendered materially inaccurate thereby. Notwithstanding that any such supplement to such representation may disclose the existence or occurrence of events, facts or circumstances which are either prohibited by the terms of this Agreement or any other Loan Documents or which result in the material breach of any

representation or warranty, such supplement to such representation shall not be deemed either an amendment thereof or a waiver of such breach unless expressly consented to in writing by Administrative Agent and the requisite number of Lenders under Section 8.2, and no such amendments, except as the same may be consented to in a writing which expressly includes a waiver, shall be or be deemed a waiver by the Administrative Agent or any Lender of any Default disclosed therein. Any items disclosed in any such supplemental disclosures shall be included in the calculation of any limits, baskets or similar restrictions contained in this Agreement or any of the other Loan Documents.

ARTICLE II

THE CREDITS

2.1. Commitment. From and including the Closing Date and prior to the Facility Termination Date, upon the satisfaction of the conditions precedent set forth in Section 4.1, 4.2 and 4.3, as applicable, each Lender severally and not jointly agrees, on the terms and conditions set forth in this Agreement, to (i) make Revolving Loans to the Borrowers in Dollars and (ii) participate in Facility LCs issued upon the request of the Borrowers in Dollars, from time to time in amounts not to exceed in the aggregate at any one time outstanding of its Pro Rata Share of the Available Aggregate Commitment; *provided* that at no time shall the Aggregate Outstanding Credit Exposure hereunder exceed the Aggregate Commitment. Subject to the terms of this Agreement, the Borrowers may borrow, repay and reborrow Revolving Loans at any time prior to the Facility Termination Date. The Commitments to lend hereunder shall expire automatically on the Facility Termination Date. The LC Issuers will issue Facility LCs hereunder on the terms and conditions set forth in Section 2.21.

2.2. Swing Line Loans.

2.2.1. Amount of Swing Line Loans. Upon the satisfaction of the conditions precedent set forth in Section 4.2 and, if such Swing Line Loan is to be made on the date of the initial Advance hereunder, the satisfaction of the conditions precedent set forth in Section 4.1 and 4.3 as well, from and including the Closing Date and prior to the Facility Termination Date, the Swing Line Lender agrees, on the terms and conditions set forth in this Agreement, to make Swing Line Loans, in Dollars, to the Borrowers from time to time in an aggregate principal amount not to exceed the Swing Line Commitment, *provided* that the Aggregate Outstanding Credit Exposure shall not at any time exceed the Aggregate Commitment, and *provided further* that at no time shall the sum of (i) the Swing Line Lender's share of the obligations to participate in the Swing Line Loans, *plus* (ii) the outstanding Revolving Loans made by the Swing Line Lender pursuant to Section 2.1, exceed the Swing Line Lender's Commitment at such time. Subject to the terms of this Agreement, the Borrowers may borrow, repay and reborrow Swing Line Loans at any time prior to the Facility Termination Date.

2.2.2. Borrowing Notice. The applicable Borrower shall deliver to the Administrative Agent and the Swing Line Lender irrevocable notice (a "Swing Line Borrowing Notice") not later than 11:00 a.m. (Chicago time) on the Borrowing Date of each Swing Line Loan, specifying (i) the applicable Borrowing Date (which date shall be a Business Day), and (ii) the aggregate amount of the requested Swing Line Loan which shall be an amount not less than \$1,000,000 and

integral multiples of \$500,000 in excess thereof. Each Swing Line Loan shall bear interest on the outstanding principal amount thereof, for each day from and including the day such Swing Line Loan is made to but excluding the date it is paid, at a rate per annum equal to the sum of (a) the Alternate Base Rate or such other rate as shall be agreed to by the Swing Line Lender and the applicable Borrower *plus* (b) the then Applicable Margin for Floating Rate Loans, changing as and when the Applicable Margin changes.

2.2.3. Making of Swing Line Loans. Promptly after receipt of a Swing Line Borrowing Notice, the Administrative Agent shall notify each Lender by fax, or other similar form of transmission, of the requested Swing Line Loan. Not later than 2:00 p.m. (Chicago time) on the applicable Borrowing Date, the Swing Line Lender shall make available the Swing Line Loan, in funds immediately available in Chicago, to the Administrative Agent at its address specified pursuant to Article XIV. The Administrative Agent will promptly make the funds so received from the Swing Line Lender available to the applicable Borrower on the Borrowing Date at the Administrative Agent's aforesaid address.

2.2.4. Repayment of Swing Line Loans. Each Swing Line Loan shall be paid in full by the Borrowers on or before the fifth (5th) Business Day after the Borrowing Date for such Swing Line Loan. In addition, the Swing Line Lender (i) may at any time in its sole discretion with respect to any outstanding Swing Line Loan, or (ii) shall on the fifth (5th) Business Day after the Borrowing Date of any Swing Line Loan, require each Lender (including the Swing Line Lender) to make a Revolving Loan in the amount of such Lender's Pro Rata Share of such Swing Line Loan (including, without limitation, any interest accrued and unpaid thereon), for the purpose of repaying such Swing Line Loan. Not later than 12:00 noon (Chicago time) on the date of any notice received pursuant to this Section 2.2.4, each Lender shall make available its required Revolving Loan, in funds immediately available in Chicago to the Administrative Agent at its address specified pursuant to Article XIV. Revolving Loans made pursuant to this Section 2.2.4 shall initially be Floating Rate Loans and thereafter may be continued as Floating Rate Loans or converted into Eurodollar Loans in the manner provided in Section 2.10 and subject to the other conditions and limitations set forth in this Article II. Unless a Lender shall have notified the Swing Line Lender, prior to its making any Swing Line Loan, that any applicable condition precedent set forth in Sections 4.1, 4.2 or 4.3 had not then been satisfied, such Lender's obligation to make Revolving Loans pursuant to this Section 2.2.4 to repay Swing Line Loans shall be unconditional, continuing, irrevocable and absolute and shall not be affected by any circumstances, including, without limitation, (a) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against any Agent, the Swing Line Lender or any other Person, (b) the occurrence or continuance of a Default or Unmatured Default, (c) any adverse change in the condition (financial or otherwise) of any Borrower, or (d) any other circumstances, happening or event whatsoever. In the event that any Lender fails to make payment to the Administrative Agent of any amount due under this Section 2.2.4, the Administrative Agent shall be entitled to receive, retain and apply against such obligation the principal and interest otherwise payable to such Lender hereunder until the Administrative Agent receives such payment from such Lender or such obligation is otherwise fully satisfied. In addition to the foregoing, if for any reason any Lender fails to make payment to the Administrative Agent of any amount due under this Section 2.2.4, such Lender shall be deemed, at the option of the Administrative Agent, to have unconditionally and irrevocably purchased from the Swing Line Lender, without recourse or warranty, an undivided interest and

participation in the applicable Swing Line Loan in the amount of such Revolving Loan, and such interest and participation may be recovered from such Lender together with interest thereon at the Federal Funds Effective Rate for each day during the period commencing on the date of demand and ending on the date such amount is received. On the Facility Termination Date, the Borrowers shall repay in full the outstanding principal balance of the Swing Line Loans.

2.3. Required Payments; Termination.

2.3.1. Required Payments. This Agreement shall be effective until the Facility Termination Date. Any outstanding Advances and all other unpaid Obligations shall be paid in full by the Borrowers on the Facility Termination Date.

2.3.2. Termination. Notwithstanding the termination of this Agreement on the Facility Termination Date, until all of the Obligations (other than contingent indemnity obligations) shall have been fully paid and satisfied and all financing arrangements among the Borrowers and the Lenders hereunder and under the other Loan Documents shall have been terminated, all of the rights and remedies under this Agreement and the other Loan Documents shall survive and the Administrative Agent shall be entitled to retain its security interest in and to all existing and future collateral (if any).

2.4. Revolving Loans. Each Advance hereunder (other than any Swing Line Loan) shall consist of Revolving Loans made from the several Lenders ratably in proportion to the ratio that their respective Commitments bear to the Aggregate Commitment.

2.5. Types of Advances. The Advances may be Revolving Loans consisting of Floating Rate Advances or Eurodollar Advances, or a combination thereof, selected by the applicable Borrower in accordance with Sections 2.9 and 2.10, or Swing Line Loans selected by the applicable Borrower in accordance with Section 2.2.

2.6. Facility Fee; Utilization Fee; Reductions in Aggregate Commitment.

2.6.1. Facility Fee. The Borrowers agree to pay to the Administrative Agent for the account of each Lender a facility fee (the "**Facility Fee**") at a per annum rate equal to the Applicable Facility Fee Rate on the average daily amount of such Lender's Commitment (regardless of usage) (or, from and after the Facility Termination Date, such Lender's average daily Outstanding Credit Exposure) from and including the Closing Date to and including the date on which this Agreement is terminated in full and all Obligations hereunder have been paid in full pursuant to Section 2.3, payable quarterly in arrears on each Payment Date hereafter and until all Obligations hereunder have been paid in full.

2.6.2. Utilization Fee. If the Aggregate Outstanding Credit Exposure exceeds thirty-three and one-third percent (33 1/3%) of the Aggregate Commitment hereunder (or, if all or any part of the Aggregate Commitment has been terminated, the Aggregate Commitment in effect immediately prior to such termination), the Borrowers will pay to the Administrative Agent for the ratable benefit of the Lenders a utilization fee (the "**Utilization Fee**") at a per annum rate equal to the Applicable Utilization Fee Rate on the Aggregate Outstanding Credit Exposure on such date, payable quarterly in arrears on each Payment Date and on the date this Agreement is terminated in full and all Obligations hereunder have been paid in full pursuant to Section 2.3.

2.6.3. Reductions in Aggregate Commitment. The Borrowers may permanently reduce the Aggregate Commitment in whole, or in part ratably among the Lenders in a minimum amount of \$5,000,000 (and in multiples of \$1,000,000 if in excess thereof), upon at least three (3) Business Days' prior written notice to the Administrative Agent of such reduction, which notice shall specify the amount of any such reduction; *provided, however*, that the amount of the Aggregate Commitment may not be reduced below the Aggregate Outstanding Credit Exposure. All accrued Facility Fees shall be payable on the effective date of any termination of all or any part of the obligations of the Lenders to make Credit Extensions hereunder.

2.7. Minimum Amount of Each Advance. Each Eurodollar Advance shall be in the minimum amount of \$5,000,000 (and in multiples of \$1,000,000 if in excess thereof), and each Floating Rate Advance shall be in the minimum amount of \$1,000,000 (and in multiples of \$250,000 if in excess thereof), *provided, however*, that any Floating Rate Advance may be in the amount of the Available Aggregate Commitment.

2.8. Optional Principal Payments. The Borrowers may from time to time pay, without penalty or premium, all outstanding Floating Rate Advances, or any portion of the outstanding Floating Rate Advances, in a minimum aggregate amount of \$1,000,000 or any integral multiple of \$250,000 in excess thereof, upon prior notice to the Administrative Agent at or before 12:00 noon (Chicago time) one (1) Business Day prior to the date of such payment. The Borrowers may from time to time pay, subject to the payment of any funding indemnification amounts required by Section 3.4 but without penalty or premium, all outstanding Eurodollar Advances, or, in a minimum aggregate amount of \$5,000,000 or any integral multiple of \$1,000,000 in excess thereof, any portion of the outstanding Eurodollar Advances upon five (5) Business Days' prior notice to the Administrative Agent. The Borrowers may at any time pay, without penalty or premium, all outstanding Swing Line Loans, or, in a minimum amount of \$1,000,000 and increments of \$500,000 in excess thereof, any portion of the outstanding Swing Line Loans, with notice to the Administrative Agent and the Swing Line Lender by 12:00 noon (Chicago time) on the date of repayment.

2.9. Method of Selecting Types and Interest Periods for New Advances.

2.9.1. Method of Selecting Types and Interest Periods for New Advances. Other than with respect to Swing Line Loans (which shall be governed by Section 2.2), the applicable Borrower shall select the Type of Advance and, in the case of each Eurodollar Advance, the Interest Period applicable thereto from time to time; *provided* that there shall be no more than ten (10) Interest Periods in effect with respect to all of the Revolving Loans at any time, unless such limit has been waived by the Administrative Agent in its sole discretion. The applicable Borrower shall give the Administrative Agent irrevocable notice (a "**Borrowing Notice**") not later than 10:00 a.m. (Chicago time) on the Borrowing Date of each Floating Rate Advance, and three (3) Business Days before the Borrowing Date for each Eurodollar Advance, specifying:

- (i) the Borrowing Date, which shall be a Business Day, of such Advance,
- (ii) the aggregate amount of such Advance,
- (iii) the Type of Advance selected, and

(iv) in the case of each Eurodollar Advance, the Interest Period applicable thereto.

2.9.2. **Method of Borrowing.** On each Borrowing Date, each Lender shall make available its Loan or Loans, if any, not later than noon, Chicago time, in Federal or other funds immediately available to the Administrative Agent, in Chicago, Illinois at its address specified in or pursuant to Article XIV. Unless the Administrative Agent determines that any applicable condition specified in Article IV has not been satisfied, the Administrative Agent will make the funds so received from the Lenders available to the applicable Borrower at the Administrative Agent's aforesaid address by not later than 2:30 p.m. (Chicago time). Notwithstanding the foregoing provisions of this Section 2.9.2, to the extent that a Loan made by a Lender matures on the Borrowing Date of a requested Loan, such Lender shall apply the proceeds of the Loan it is then making to the repayment of principal of the maturing Loan.

2.10. **Conversion and Continuation of Outstanding Advances; No Conversion or Continuation of Eurodollar Advances After Default.** Floating Rate Advances shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into Eurodollar Advances pursuant to this Section 2.10 or are repaid in accordance with Section 2.8. Each Eurodollar Advance shall continue as a Eurodollar Advance until the end of the then applicable Interest Period therefor, at which time such Eurodollar Advance shall be automatically converted into a Floating Rate Advance unless (x) such Eurodollar Advance is or was repaid in accordance with Section 2.8 or (y) the applicable Borrower shall have given the Administrative Agent a Conversion/Continuation Notice (as defined below) requesting that, at the end of such Interest Period, such Eurodollar Advance continue as a Eurodollar Advance for the same or another Interest Period or be converted into a Floating Rate Advance. Subject to the terms of Section 2.7, the Borrowers may elect from time to time to convert all or any part of an Advance of any Type into any other Type or Types of Advances; *provided* that any conversion of any Eurodollar Advance shall be made on, and only on, the last day of the Interest Period applicable thereto. Notwithstanding anything to the contrary contained in this Section 2.10, no Advance may be converted or continued as a Eurodollar Advance (except with the consent of the Required Lenders) when any Default or Unmatured Default is continuing. The applicable Borrower shall give the Administrative Agent irrevocable notice (a "**Conversion/Continuation Notice**") of each conversion of an Advance or continuation of a Eurodollar Advance not later than 10:00 a.m. (Chicago time) at least one (1) Business Day, in the case of a conversion into a Floating Rate Advance, or three (3) Business Days, in the case of a conversion into or continuation of a Eurodollar Advance, prior to the date of the requested conversion or continuation, specifying:

- (i) the requested date, which shall be a Business Day, of such conversion or continuation,
- (ii) the aggregate amount and Type of the Advance which is to be converted or continued, and
- (iii) the amount of such Advance which is to be converted into or continued as a Eurodollar Advance and the duration of the Interest Period applicable thereto.

Promptly after receipt of any Conversion/Continuation Notice, the Administrative Agent shall provide the Lenders with notice thereof.

2.11. Changes in Interest Rate, etc. Each Floating Rate Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is automatically converted from a Eurodollar Advance into a Floating Rate Advance pursuant to Section 2.10, to but excluding the date it is paid or is converted into a Eurodollar Advance pursuant to Section 2.10 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each Eurodollar Advance shall bear interest on the outstanding principal amount thereof from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined by the Administrative Agent as applicable to such Eurodollar Advance based upon the applicable Borrower's selections under Sections 2.9 and 2.10 and otherwise in accordance with the terms hereof. No Interest Period may end after the Facility Termination Date.

2.12. Rates Applicable After Default. During the continuance of a Default (including the Borrowers' failure to pay any Loan at maturity) the Required Lenders may, at their option, by notice to the Borrowers (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to changes in interest rates), declare that (i) the Advances, all fees or any other Obligations hereunder shall bear interest at the Floating Rate *plus* 2% per annum and (ii) the LC Fee shall be increased by 2% per annum, *provided* that, during the continuance of a Default under Section 7.6 or 7.7, such interest rate and such increase in the LC Fee set forth above shall be applicable to all Credit Extensions, Advances, fees and other Obligations hereunder without any election or action on the part of the Administrative Agent, any LC Issuer or any Lender.

2.13. Method of Payment. All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIV, or at any other Lending Installation of the Administrative Agent specified in writing by the Administrative Agent to the Company, by 12:00 noon (Chicago time) on the date when due and shall (except (i) in the case of Reimbursement Obligations for which the applicable LC Issuer has not been fully indemnified by the Lenders or (ii) with respect to repayments of Swing Line Loans) be applied ratably by the Administrative Agent among the Lenders. Each payment delivered to the Administrative Agent for the account of any Lender shall be delivered promptly by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at such Lender's address specified pursuant to Article XIV or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender. Each reference to the Administrative Agent in this Section 2.13 shall also be deemed to refer, and shall apply equally, to the applicable LC Issuer, in the case of payments required to be made by the applicable Borrower to such LC Issuer pursuant to Section 2.21.6. The Administrative Agent is hereby authorized to charge the account of the Borrowers maintained with Bank One or any of its Affiliates for each payment of principal, interest and fees as it becomes due hereunder.

2.14. Noteless Agreement; Evidence of Indebtedness.

(i) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(ii) The Administrative Agent shall also maintain accounts in which it will record (a) the date and the amount of each Revolving Loan made hereunder and Type thereof and the Interest Period, if any, applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from any Borrower to each Lender hereunder, (c) the effective date and amount of each Assignment Agreement delivered to and accepted by it and the parties thereto pursuant to Section 13.3, (d) the original stated amount of each Facility LC and the amount of LC Obligations outstanding at any time, (e) the amount of any sum received by the Administrative Agent hereunder from the Borrowers and each Lender's share thereof, and (f) all other appropriate debits and credits as provided in this Agreement, including, without limitation, all fees, charges, expenses and interest.

(iii) The entries maintained in the accounts maintained pursuant to clauses (i) and (ii) above shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded in the absence of manifest error; *provided, however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Obligations in accordance with their terms.

(iv) Any Lender may request that its Loans be evidenced by a promissory note or, in the case of the Swing Line Lender, promissory notes representing its Revolving Loans and Swing Line Loans, respectively, substantially in the form of Exhibit E, with appropriate changes for notes evidencing Swing Line Loans (each, a "**Note**"). In such event, the Borrowers shall prepare, execute and deliver to such Lender such Note or Notes payable to the order of such Lender. Thereafter, the Loans evidenced by each such Note and interest thereon shall at all times (including after any assignment pursuant to Section 13.3) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 13.3, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in clauses (i) and (ii) above.

2.15. Telephonic Notices. The Borrowers hereby authorize the Lenders and the Administrative Agent to extend, convert or continue Advances, effect selections of Types of Advances and transfer funds based on telephonic notices made by any person or persons the Administrative Agent or any Lender in good faith believes to be acting on behalf of a Borrower, it being understood that the foregoing authorization is specifically intended to allow Borrowing Notices and Conversion/Continuation Notices to be given telephonically. The Borrowers agree to deliver promptly to the Administrative Agent a written confirmation, signed by an Authorized Officer, if such confirmation is requested by the Administrative Agent or any Lender, of each telephonic notice. If the written confirmation differs in any material respect from the action

taken by the Administrative Agent and the Lenders, the records of the Administrative Agent and the Lenders shall govern absent manifest error.

2.16. Interest Payment Dates; Interest and Fee Basis. Interest accrued on each Floating Rate Advance and Swing Line Loan shall be payable in arrears on each Payment Date, commencing with the first such date to occur after the Closing Date, on any date on which the Floating Rate Advance or Swing Line Loan is prepaid, whether due to acceleration or otherwise, and at maturity. Interest accrued on that portion of the outstanding principal amount of any Floating Rate Advance converted into a Eurodollar Advance on a day other than a Payment Date shall be payable on the date of conversion. Interest accrued on each Eurodollar Advance shall be payable on the last day of its applicable Interest Period, on any date on which the Eurodollar Advance is prepaid, whether by acceleration or otherwise, and at maturity; *provided*, that interest accrued on each Eurodollar Advance having an Interest Period longer than three (3) months shall also be payable on the last day of each three-month interval during such Interest Period. Interest on Eurodollar Advances and Swing Line Loans and LC Fees, Facility Fees and Utilization Fees shall be calculated for actual days elapsed on the basis of a 360-day year; interest on Floating Rate Advances shall be calculated for actual days elapsed on the basis of a 365/366-day year. Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to 12:00 noon (Chicago time) at the place of payment. If any payment of principal of or interest on an Advance, any fees or any other amounts payable to any Agent or any Lender hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest, fees and commissions in connection with such payment.

2.17. Notification of Advances, Interest Rates, Prepayments and Commitment Reductions. Promptly after receipt thereof, the Administrative Agent will notify each Lender of the contents of each Aggregate Commitment reduction notice, Borrowing Notice, Swing Line Borrowing Notice, Conversion/Continuation Notice, and repayment notice received by it hereunder. Promptly after notice from the applicable LC Issuer, the Administrative Agent will notify each Lender of the contents of each request for issuance of a Facility LC hereunder. The Administrative Agent will notify each Lender of the interest rate applicable to each Eurodollar Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

2.18. Lending Installations. Subject to the provisions of Section 3.6, each Lender may book its Loans and its participation in any LC Obligations and the LC Issuers may book the Facility LCs at any Lending Installation selected by such Lender or the applicable LC Issuer, as the case may be, and may change its Lending Installation from time to time. All terms of this Agreement shall apply to any such Lending Installation and the Loans, Facility LCs, participations in LC Obligations and any Notes issued hereunder shall be deemed held by each Lender or the applicable LC Issuer, as the case may be, for the benefit of any such Lending Installation. Subject to the provisions of Section 3.6, each Lender and each LC Issuer may, by written notice to the Administrative Agent and the Company in accordance with Article XIV, designate replacement or additional Lending Installations through which Loans will be made by it or Facility LCs will be issued by it and for whose account Loan payments or payments with respect to Facility LCs are to be made.

2.19. Non-Receipt of Funds by the Administrative Agent. Unless a Borrower or a Lender, as the case may be, notifies the Administrative Agent prior to the time on which it is scheduled to make payment to the Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of a Borrower, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or Borrower, as the case may be, has not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Effective Rate for such day for the first three (3) days and, thereafter, the interest rate applicable to the relevant Loan or (y) in the case of payment by a Borrower, the interest rate applicable to the relevant Loan, including the interest rate applicable pursuant to Section 2.12.

2.20. Replacement of Lender. The Borrowers shall have the right, in their sole discretion, at any time and from time to time to terminate or replace the Commitment of any Lender (an "**Affected Lender**"), in whole, upon at least thirty (30) days' prior notice to the Administrative Agent and such Lender, (a) if such Lender has failed or refused to make available the full amount of any Revolving Loans as required by its Commitment hereunder, (b) if such Lender has been merged or consolidated with, or transferred all or substantially all of its assets to, or otherwise been acquired by any other Person, or (c) if such Lender has demanded that the Borrowers make any additional payment to any Lender pursuant to Section 3.1, 3.2 or 3.5, or if such Lender's obligation to make or continue, or convert Floating Rate Advances into, Eurodollar Advances has been suspended pursuant to Section 3.3; *provided, however* that no such Commitment termination shall reduce the Aggregate Commitment by more than fifteen percent (15%) thereof; *provided further*, that no Default or Unmatured Default shall have occurred and be continuing at the time of such termination or replacement, and that, concurrently with such termination or replacement, (i) if the Affected Lender is being replaced, another bank or other entity which is reasonably satisfactory to the Borrowers and the Administrative Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Affected Lender pursuant to an Assignment Agreement substantially in the form of Exhibit C and to become a Lender for all purposes under this Agreement and to assume all obligations of the Affected Lender to be terminated as of such date and to comply with the requirements of Section 13.3 applicable to assignments, (ii) the Borrowers shall pay to such Affected Lender in immediately available funds on the day of such replacement (A) all interest, fees and other amounts then accrued but unpaid to such Affected Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Affected Lender under Sections 3.1, 3.2 and 3.5, to the extent applicable, and (B) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 3.4 had the Loans of such Affected Lender been prepaid on such date rather than sold to the replacement Lender, and (iii) if the Affected Lender is being terminated, the Borrowers shall pay to such Affected Lender all Obligations due to such Affected Lender (including the amounts

described in the immediately preceding clauses (i) and (ii) plus the outstanding principal balance of such Affected Lender's Credit Extensions).

2.21. Facility LCs.

2.21.1. Issuance; Transitional Facility LCs.

(i) Issuance. The LC Issuers hereby agree, on the terms and conditions set forth in this Agreement, to issue standby and performance letters of credit in Dollars (each, together with the letters of credit deemed issued by the LC Issuers hereunder pursuant to Section 2.21.1(ii), a "**Facility LC**") and to renew, extend, increase, decrease or otherwise modify each Facility LC ("**Modify**," and each such action a "**Modification**"), from time to time from and including the Closing Date and prior to the Facility Termination Date upon the request of any Borrower; *provided* that immediately after each such Facility LC is issued or Modified, (i) the aggregate amount of the outstanding LC Obligations shall not exceed \$75,000,000 and (ii) the Aggregate Outstanding Credit Exposure shall not exceed the Aggregate Commitment. No Facility LC shall have an expiry date later than the earlier of (x) the fifth (5th) Business Day prior the Facility Termination Date and (y) one year after its issuance; *provided*, that any Facility LC (x) may contain customary "evergreen" provisions pursuant to which the expiry date is automatically extended for a specific time period unless the LC Issuer gives notice to the beneficiary of such Facility LC at least a specified time prior to the expiry date then in effect and/or (y) may have an expiration date more than one year from the date of issuance if required under related industrial revenue bond documents and agreed to by the LC Issuer.

(ii) Transitional Provision. Schedule 2.21 contains a schedule of certain letters of credit issued for the account of the Borrowers prior to the Closing Date. Subject to the satisfaction of the conditions contained in Sections 4.1, 4.2 and 4.3, from and after the Closing Date such letters of credit shall be deemed to be Facility LCs issued pursuant to this Section 2.21.

2.21.2. Participations. On the Closing Date, with respect to the Facility LCs identified on Schedule 2.21, and upon the issuance or Modification by the applicable LC Issuer of a Facility LC in accordance with this Section 2.21, such LC Issuer shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from such LC Issuer, a participation in such Facility LC (and each Modification thereof) and the related LC Obligations in proportion to its Pro Rata Share.

2.21.3. Notice. Subject to Section 2.21.1, the applicable Borrower shall give the applicable LC Issuer notice prior to 10:00 a.m. (Chicago time) at least five (5) Business Days prior to the proposed date of issuance or Modification of each Facility LC, specifying the beneficiary, the proposed date of issuance (or Modification) and the expiry date of such Facility LC, and describing the proposed terms of such Facility LC and the nature of the transactions proposed to be supported thereby. Upon receipt of such notice, the applicable LC Issuer shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each Lender, of the contents thereof and of the amount of such Lender's participation in such proposed Facility LC. The issuance or Modification by any LC Issuer of any Facility LC shall,

in addition to the conditions precedent set forth in Article IV (the satisfaction of which such LC Issuer shall have no duty to ascertain), be subject to the conditions precedent that such Facility LC shall be satisfactory to such LC Issuer and that the applicable Borrower shall have executed and delivered such application agreement and/or such other instruments and agreements relating to such Facility LC as the applicable LC Issuer shall have reasonably requested (each, a "**Facility LC Application**"). In the event of any conflict between the terms of this Agreement and the terms of any Facility LC Application, the terms of this Agreement shall control.

2.21.4. **LC Fees.** With respect to each Standby LC, the Borrowers shall pay to the Administrative Agent, for the account of the Lenders ratably in accordance with their respective Pro Rata Shares, a letter of credit fee at a per annum rate equal to the Applicable Margin for Eurodollar Loans in effect from time to time on the average daily undrawn stated amount under such Standby LC, such fees to be payable in arrears on each Payment Date (each such fee described in this sentence being an "**LC Fee**"). The Borrowers shall also pay to each LC Issuer for its own account (x) at the time of such LC Issuer's issuance of any Standby LC, a fronting fee equal to 0.125% per annum on the initial stated amount available for drawing under each such Facility LC issued by such LC Issuer, and (y) other customary, documentary and processing charges in connection with the issuance or Modification of and draws under Facility LCs in accordance with the applicable LC Issuer's standard schedule for such charges as in effect from time to time.

2.21.5. **Administration; Reimbursement by Lenders.** Upon receipt from the beneficiary of any Facility LC of any demand for payment under such Facility LC, the applicable LC Issuer shall notify the Administrative Agent and the Administrative Agent shall promptly notify the Company and each other Lender as to the amount to be paid by such LC Issuer as a result of such demand and the proposed payment date (the "**LC Payment Date**"). The responsibility of each LC Issuer to the Borrowers and each Lender shall be only to determine that the documents (including each demand for payment) delivered under each Facility LC issued by such LC Issuer in connection with such presentment shall be in conformity in all material respects with such Facility LC. Each LC Issuer shall endeavor to exercise the same care in the issuance and administration of the Facility LCs issued by such LC Issuer as it does with respect to letters of credit in which no participations are granted, it being understood that in the absence of any gross negligence or willful misconduct by the applicable LC Issuer, each Lender shall be unconditionally and irrevocably liable without regard to the occurrence of any Default, the Facility Termination Date or any condition precedent whatsoever, to reimburse such LC Issuer on demand for (i) such Lender's Pro Rata Share of the amount of each payment made by such LC Issuer under each Facility LC issued by such LC Issuer to the extent such amount is not reimbursed by the Borrowers pursuant to Section 2.21.6 below, plus (ii) interest on the foregoing amount to be reimbursed by such Lender, for each day from the date of the applicable LC Issuer's demand for such reimbursement (or, if such demand is made after 11:00 a.m. (Chicago time) on such date, from the next succeeding Business Day) to the date on which such Lender pays the amount to be reimbursed by it, at a rate of interest per annum equal to the Federal Funds Effective Rate for the first three days and, thereafter, at a rate of interest equal to the rate applicable to Floating Rate Advances.

2.21.6. **Reimbursement by the Borrowers.** The Borrowers shall be irrevocably and unconditionally obligated to reimburse the LC Issuers on or before the applicable LC Payment

Date for any amounts to be paid by any LC Issuer upon any drawing under any Facility LC issued by such LC Issuer, without presentment, demand, protest or other formalities of any kind; *provided* that neither any Borrower nor any Lender shall hereby be precluded from asserting any claim for direct (but not consequential) damages suffered by such Borrower or such Lender to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the applicable LC Issuer in determining whether a request presented under any Facility LC issued by it complied with the terms of such Facility LC or (ii) the applicable LC Issuer's failure to pay under any Facility LC issued by it after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. Commencing on the date that the Administrative Agent gives notice to the Company by 11:00 a.m. (Chicago time) as required under Section 2.21.5 of the applicable LC Payment Date, all such amounts paid by any LC Issuer and remaining unpaid by the Borrowers shall bear interest, payable on demand, for each day from and including such LC Payment Date until paid at a rate per annum equal to (x) the rate applicable to Floating Rate Advances for such day if such day falls on or before the applicable LC Payment Date and (y) the sum of 2% plus the rate applicable to Floating Rate Advances for such day if such day falls after such LC Payment Date. Each LC Issuer will pay to each Lender ratably in accordance with its Pro Rata Share all amounts received by it from the Borrowers for application in payment, in whole or in part, of the Reimbursement Obligation in respect of any Facility LC issued by such LC Issuer, but only to the extent such Lender has made payment to such LC Issuer in respect of such Facility LC pursuant to Section 2.21.5. Subject to the terms and conditions of this Agreement (including without limitation the submission of a Borrowing Notice in compliance with Section 2.9 and the satisfaction of the applicable conditions precedent set forth in Article IV), the applicable Borrower may request an Advance hereunder for the purpose of satisfying any Reimbursement Obligation.

2.21.7. Obligations Absolute. The Borrowers' obligations under this Section 2.21 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which any Borrower may have or have had against any LC Issuer, any Lender or any beneficiary of a Facility LC. The Borrowers further agree with the LC Issuers and the Lenders that the LC Issuers and the Lenders shall not be responsible for, and no Borrower's Reimbursement Obligation in respect of any Facility LC shall be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged, or any dispute between or among any Borrower, any of its Affiliates, the beneficiary of any Facility LC or any financing institution or other party to whom any Facility LC may be transferred or any claims or defenses whatsoever of any Borrower or of any of its Affiliates against the beneficiary of any Facility LC or any such transferee. No LC Issuer shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Facility LC. The Borrowers agree that any action taken or omitted by any LC Issuer or any Lender under or in connection with each Facility LC and the related drafts and documents, if done without gross negligence or willful misconduct, shall be binding upon the Borrowers and shall not put any LC Issuer or any Lender under any liability to the Borrowers. Nothing in this Section 2.21.7 is intended to limit the right of the Borrowers to make a claim against any LC Issuer for damages as contemplated by the proviso to the first sentence of Section 2.21.6.

2.21.8. Actions of LC Issuers. Each LC Issuer shall be entitled to rely, and shall be fully protected in relying, upon any Facility LC, draft, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, teletype message, statement, order or other document 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, independent accountants and other experts selected by such LC Issuer. Each LC Issuer shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first have received such advice or concurrence of the Required Lenders as it reasonably deems appropriate or it shall first be indemnified to its reasonable 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. Notwithstanding any other provision of this Section 2.21, each LC Issuer shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and any future holders of a participation in any Facility LC.

2.21.9. Indemnification. The Borrowers hereby agree to indemnify and hold harmless each Lender, each LC Issuer and the Administrative Agent, and their respective directors, officers, agents and employees from and against any and all claims and damages, losses, liabilities, costs or expenses which such Lender, such LC Issuer or the Administrative Agent may incur (or which may be claimed against such Lender, such LC Issuer or the Administrative Agent by any Person whatsoever) by reason of or in connection with the issuance, execution and delivery or transfer of or payment or failure to pay under any Facility LC or any actual or proposed use of any Facility LC, including, without limitation, any claims, damages, losses, liabilities, costs or expenses which any LC Issuer may incur by reason of or in connection with (i) the failure of any other Lender to fulfill or comply with its obligations to such LC Issuer hereunder (but nothing herein contained shall affect any rights the Borrowers may have against any defaulting Lender) or (ii) by reason of or on account of such LC Issuer issuing any Facility LC which specifies that the term "Beneficiary" included therein includes any successor by operation of law of the named Beneficiary, but which Facility LC does not require that any drawing by any such successor Beneficiary be accompanied by a copy of a legal document, satisfactory to such LC Issuer, evidencing the appointment of such successor Beneficiary; *provided* that the Borrowers shall not be required to indemnify any Lender, any LC Issuer or the Administrative Agent for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (x) the willful misconduct or gross negligence of the applicable LC Issuer in determining whether a request presented under any Facility LC issued by such LC Issuer complied with the terms of such Facility LC or (y) any LC Issuer's failure to pay under any Facility LC issued by such LC Issuer after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. Nothing in this Section 2.21.9 is intended to limit the obligations of the Borrowers under any other provision of this Agreement.

2.21.10. Lenders' Indemnification. Each Lender shall, ratably in accordance with its Pro Rata Share, indemnify each LC Issuer, its affiliates and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrowers) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees' gross negligence or willful misconduct or the applicable LC Issuer's failure to pay under any Facility LC issued by such LC Issuer after the

presentation to it of a request strictly complying with the terms and conditions of such Facility LC) that such indemnitees may suffer or incur in connection with this Section 2.21 or any action taken or omitted by such indemnitees hereunder.

2.21.11. Facility LC Collateral Account.

(i) Each Borrower agrees that it will, as required by Section 8.1 and until the final expiration date of any Facility LC and thereafter as long as any amount is payable to the LC Issuers or the Lenders in respect of any Facility LC, maintain a special collateral account pursuant to arrangements satisfactory to the Administrative Agent (the "**Facility LC Collateral Account**") at the Administrative Agent's office at the address specified pursuant to Article XIV, in the name of such Borrower but under the sole dominion and control of the Administrative Agent, for the benefit of the Lenders and in which such Borrower shall have no interest other than as set forth in this Section 2.21.11. Each Borrower hereby pledges, assigns and grants to the Administrative Agent, on behalf of and for the ratable benefit of the Lenders and the LC Issuers, a security interest in all of such Borrower's right, title and interest in and to all funds which may from time to time be on deposit in the Facility LC Collateral Account to secure the prompt and complete payment and performance of the Obligations. The Administrative Agent will invest any funds on deposit from time to time in the Facility LC Collateral Account in certificates of deposit of Bank One having a maturity not exceeding 30 days. Nothing in this Section 2.21.11 shall either obligate the Administrative Agent to require the Borrowers to deposit any funds in the Facility LC Collateral Account or limit the right of the Administrative Agent to release any funds held in the Facility LC Collateral Account in each case other than as required by clause (iv) below.

(ii) If at any time while any Default is continuing, the Administrative Agent determines that the Collateral Shortfall Amount at such time is greater than zero, the Administrative Agent may make demand on the Borrowers to pay, and the Borrowers will, forthwith upon such demand and without any further notice or act, pay to the Administrative Agent the Collateral Shortfall Amount, which funds shall be deposited in the Facility LC Collateral Account.

(iii) The Administrative Agent may at any time or from time to time after funds are deposited in the Facility LC Collateral Account, apply such funds to the payment of the Obligations as shall from time to time have become due and payable by any Borrower to the Lenders or the LC Issuers under the Loan Documents.

(iv) If any Default is continuing, neither the Borrowers nor any Person claiming on behalf of or through the Borrowers shall have any right to withdraw any of the funds held in the Facility LC Collateral Account. After all of the Obligations have been indefeasibly paid in full (other than contingent indemnity obligations) and the Aggregate Commitment has been terminated, any funds remaining in the Facility LC Collateral Account shall be returned by the Administrative Agent to the Borrowers or paid to whomever may be legally entitled thereto at such time.

2.21.12. Rights as a Lender. In its capacity as a Lender, each LC Issuer shall have the same rights and obligations as any other Lender.

2.22. **Subsidiary Borrowers.** The Company may at any time or from time to time, add as a party to this Agreement any Wholly-Owned Subsidiary to be a Subsidiary Borrower hereunder by the execution and delivery to the Administrative Agent and the Lenders of (a) a duly completed Assumption Letter by such Subsidiary, with the written consent of the Borrowers at the foot thereof, (b) such guaranty and subordinated intercompany indebtedness documents and, if applicable, security documents as may be reasonably required by the Administrative Agent and such other opinions, agreements, documents, certificates or other items as may be required by Section 4.3, such documents with respect to any additional Subsidiaries to be substantially similar in form and substance to the Loan Documents executed on or about the date hereof by the Subsidiaries parties hereto as of the Closing Date. No Foreign Subsidiary may be a Subsidiary Borrower. Upon such execution, delivery and consent such Subsidiary shall for all purposes be a party hereto as a Subsidiary Borrower as fully as if it had executed and delivered this Agreement. So long as the principal of and interest on any Credit Extensions made to any Subsidiary Borrower under this Agreement shall have been repaid or paid in full, all Facility LCs issued for the account of such Subsidiary Borrower have expired or been returned and terminated and all other Obligations (other than contingent indemnity obligations) of such Subsidiary Borrower under this Agreement shall have been fully performed, the Company may, by not less than five (5) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), terminate such Subsidiary Borrower's status as a "Subsidiary Borrower" or "Borrower," and such Subsidiary Borrower shall be released from any future liability (other than contingent indemnity obligations) as a "Subsidiary Borrower" or "Borrower" hereunder or under the other Loan Documents. The Administrative Agent shall give the Lenders written of the addition of any Subsidiary Borrowers to this Agreement.

2.23. **Increase of Commitments.**

(i) At any time prior to the Facility Termination Date, the Company may request that the Aggregate Commitment be increased; *provided* that, without the prior written consent of all of the Lenders, (a) the Aggregate Commitment shall at no time exceed \$300,000,000 minus the aggregate amount of all reductions in the Aggregate Commitment previously made pursuant to Section 2.6.3; and (b) each such request shall be in a minimum amount of at least \$10,000,000 and increments of \$5,000,000 in excess thereof. Such request shall be made in a written notice given to the Administrative Agent and the Lenders by the Company not less than twenty (20) Business Days prior to the proposed effective date of such increase, which notice (a "**Commitment Increase Notice**") shall specify the amount of the proposed increase in the Aggregate Commitment and the proposed effective date of such increase. In the event of such a Commitment Increase Notice, each of the Lenders shall be given the opportunity to participate in the requested increase ratably in proportions that their respective Commitments bear to the Aggregate Commitment. No Lender shall have any obligation to increase its Commitment pursuant to a Commitment Increase Notice. On or prior to the date that is fifteen (15) Business Days after receipt of the Commitment Increase Notice, each Lender shall submit to the Administrative Agent a notice indicating the maximum amount by which it is willing to increase its Commitment in connection with such Commitment Increase Notice (any such notice to the Administrative Agent being herein a "**Lender Increase Notice**"). Any Lender which does not submit a Lender Increase Notice to the Administrative Agent prior to the expiration of such fifteen (15) Business Day period shall be deemed to have denied any increase in its Commitment. In the event that the increases of Commitments set forth in the Lender Increase

Notices exceed the amount requested by the Company in the Commitment Increase Notice, the Administrative Agent and the Arranger shall have the right, in consultation with the Company, to allocate the amount of increases necessary to meet the Company's Commitment Increase Notice. In the event that the Lender Increase Notices are less than the amount requested by the Company, not later than three (3) Business Days prior to the proposed effective date the Company may notify the Administrative Agent of any financial institution that shall have agreed to become a "Lender" party hereto (a "**Proposed New Lender**") in connection with the Commitment Increase Notice. Any Proposed New Lender shall be consented to by the Administrative Agent (which consent shall not be unreasonably withheld). If the Company shall not have arranged any Proposed New Lender(s) to commit to the shortfall from the Lender Increase Notices, then the Company shall be deemed to have reduced the amount of its Commitment Increase Notice to the aggregate amount set forth in the Lender Increase Notices. Based upon the Lender Increase Notices, any allocations made in connection therewith and any notice regarding any Proposed New Lender, if applicable, the Administrative Agent shall notify the Company and the Lenders on or before the Business Day immediately prior to the proposed effective date of the amount of each Lender's and Proposed New Lenders' Commitment (the "**Effective Commitment Amount**") and the amount of the Aggregate Commitment, which amounts shall be effective on the following Business Day. Any increase in the Aggregate Commitment shall be subject to the following conditions precedent: (A) the Company shall have obtained the consent thereto of each Guarantor and its reaffirmation of the Loan Document(s) executed by it, which consent and reaffirmation shall be in writing and in form and substance reasonably satisfactory to the Administrative Agent, (B) as of the date of the Commitment Increase Notice and as of the proposed effective date of the increase in the Aggregate Commitment all representations and warranties shall be true and correct in all material respects as though made on such date and no event shall have occurred and then be continuing which constitutes a Default or Unmatured Default, (C) the Borrowers, the Administrative Agent and each Proposed New Lender or Lender that shall have agreed to provide a "Commitment" in support of such increase in the Aggregate Commitment shall have executed and delivered a "Commitment and Acceptance" substantially in the form of Exhibit I hereto, (D) counsel for the Borrowers and for the Guarantors shall have provided to the Administrative Agent supplemental opinions in form and substance reasonably satisfactory to the Administrative Agent and (E) the Borrowers and the Proposed New Lender shall otherwise have executed and delivered such other instruments and documents as may be required under Article IV or that the Administrative Agent shall have reasonably requested in connection with such increase. If any fee shall be charged by the Lenders in connection with any such increase, such fee shall be in accordance with then prevailing market conditions, which market conditions shall have been reasonably documented by the Administrative Agent to the Company. Upon satisfaction of the conditions precedent to any increase in the Aggregate Commitment, the Administrative Agent shall promptly advise the Company and each Lender of the effective date of such increase. Upon the effective date of any increase in the Aggregate Commitment that is supported by a Proposed New Lender, such Proposed New Lender shall be a party to this Agreement as a Lender and shall have the rights and obligations of a Lender hereunder and thereunder. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(ii) For purposes of this clause (ii), (A) the term "Buying Lender(s)" shall mean (1) each Lender the Effective Commitment Amount of which is greater than its Commitment prior to

the effective date of any increase in the Aggregate Commitment, and (2) each Proposed New Lender that is allocated an Effective Commitment Amount in connection with any Commitment Increase Notice and (b) the term "Selling Lender(s)" shall mean each Lender whose Commitment is not being increased from that in effect prior to such increase in the Aggregate Commitment. Effective on the effective date of any increase in the Aggregate Commitment pursuant to clause (i) above, each Selling Lender hereby sells, grants, assigns and conveys to each Buying Lender, without recourse, warranty, or representation of any kind, except as specifically provided herein, an undivided percentage in such Selling Lender's right, title and interest in and to its outstanding Loans in the respective dollar amounts and percentages necessary so that, from and after such sale, each such Selling Lender's outstanding Loans shall equal such Selling Lender's Pro Rata Share (calculated based upon the Effective Commitment Amounts) of the outstanding Loans. Effective on the effective date of the increase in the Aggregate Commitment pursuant to clause (i) above, each Buying Lender hereby purchases and accepts such grant, assignment and conveyance from the Selling Lenders. Each Buying Lender hereby agrees that its respective purchase price for the portion of the outstanding Loans purchased hereby shall equal the respective dollar amount necessary so that, from and after such payments, each Buying Lender's outstanding Loans shall equal such Buying Lender's Pro Rata Share (calculated based upon the Effective Commitment Amounts) of the outstanding Loans. Such amount shall be payable on the effective date of the increase in the Aggregate Commitment by wire transfer of immediately available funds to the Administrative Agent. The Administrative Agent, in turn, shall wire transfer any such funds received to the Selling Lenders, in same day funds, for the sole account of the Selling Lenders. Each Selling Lender hereby represents and warrants to each Buying Lender that such Selling Lender owns the Loans being sold and assigned hereby for its own account and has not sold, transferred or encumbered any or all of its interest in such Loans, except for participations which will be extinguished upon payment to Selling Lender of an amount equal to the portion of the outstanding Loans being sold by such Selling Lender. Each Buying Lender hereby acknowledges and agrees that, except for each Selling Lender's representations and warranties contained in the foregoing sentence, each such Buying Lender has entered into its Commitment and Acceptance with respect to such increase on the basis of its own independent investigation and has not relied upon, and will not rely upon, any explicit or implicit written or oral representation, warranty or other statement of the Lenders or the Administrative Agent concerning the authorization, execution, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or the other Loan Documents. The Borrowers hereby agree to compensate each Selling Lender for all losses, expenses and liabilities incurred by each Lender in connection with the sale and assignment of any Loan hereunder on the terms and in the manner as set forth in Section 3.4.

2.24. Interest. In no event shall the amount of interest, and all charges, amounts or fees contracted for, charged or collected pursuant to this Agreement, the Notes or the other Loan Documents and deemed to be interest under applicable law (collectively, "Interest") exceed the highest rate of interest allowed by applicable law (the "Maximum Rate"), and in the event any such payment is inadvertently received by the Administrative Agent or any Lender then the excess sum (the "Excess") shall be credited as a payment of principal, unless the relevant Borrower shall notify the Administrative Agent in writing that it elects to have the Excess returned forthwith. It is the express intent hereof that no Borrower pay, and the Administrative Agent and the Lenders not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may legally be paid by such Borrower under applicable law. The right to

accelerate maturity of any of the Obligations does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and the Administrative Agent and the Lenders do not intend to collect any unearned interest in the event of any such acceleration. All monies paid to the Administrative Agent or the Lenders hereunder or under any of the Notes or the other Loan Documents, whether at maturity or by prepayment, shall be subject to rebate of unearned interest as and to the extent required by applicable law. By the execution of this Agreement, each Borrower covenants, to the fullest extent permitted by law that (i) the credit or return of any Excess shall constitute the acceptance by such Borrower of such Excess, and (ii) such Borrower shall not seek or pursue any other remedy, legal or equitable, against the Administrative Agent or any Lender, based in whole or in part upon contracting for charging or receiving any Interest in excess of the Maximum Rate. For the purpose of determining whether or not any Excess has been contracted for, charged or received by the Administrative Agent or any Lender, all interest at any time contracted for, charged or received from such Borrower in connection with this Agreement, the Notes or any of the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Commitments. Each Borrower, the Administrative Agent and each Lender shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as Interest and (ii) exclude voluntary prepayments and the effects thereof. The provisions of this Section shall be deemed to be incorporated into each Note and each of the other Loan Documents (whether or not any provision of this Section is referred to therein). All such Loan Documents and communications relating to any Interest owed by any Borrower and all figures set forth therein shall, for the sole purpose of computing the extent of obligations hereunder and under the Notes and the other Loan Documents be automatically recomputed by such Borrower, and by any court considering the same, to give effect to the adjustments or credits required by this Section.

ARTICLE III

YIELD PROTECTION; TAXES

3.1. Yield Protection. If, on or after the Closing Date, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in any such law, rule, regulation, policy, guideline or directive or in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation or any LC Issuer with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

- (i) subjects any Lender or any applicable Lending Installation or any LC Issuer to any Taxes, or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to any Lender or any LC Issuer in respect of its Eurodollar Loans, Facility LCs or participations therein, or
- (ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or

for the account of, or credit extended by, any Lender or any applicable Lending Installation or any LC Issuer (other than reserves and assessments taken into account in determining the interest rate applicable to Eurodollar Advances), or

- (iii) imposes any other condition the result of which is to increase the cost to any Lender or any applicable Lending Installation or any LC Issuer of making, funding or maintaining its Eurodollar Loans or Commitment, or of issuing or participating in Facility LCs, or reduces any amount receivable by any Lender or any applicable Lending Installation or any LC Issuer in connection with its Eurodollar Loans or Commitment, Facility LCs or participations therein, or requires any Lender or any applicable Lending Installation or any LC Issuer to make any payment calculated by reference to the amount of Eurodollar Loans or Commitment, Facility LCs or participations therein held or interest or LC Fees received by it, by an amount deemed material by such Lender or such LC Issuer as the case may be,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation or such LC Issuer, as the case may be, of making or maintaining its Eurodollar Loans or Commitment or of issuing or participating in Facility LCs or to reduce the return received by such Lender or applicable Lending Installation or such LC Issuer, as the case may be, in connection with such Eurodollar Loans or Commitment, Facility LCs or participations therein, then, within fifteen (15) days of demand by such Lender, the Borrowers shall pay such Lender or LC Issuer such additional amount or amounts as will compensate such Lender or such LC Issuer, as the case may be, for such increased cost or reduction in amount received; *provided*, that the Borrowers shall not be required to compensate a Lender or LC Issuer under this Section for any increased costs or reductions incurred more than 90 days prior to the date that such Lender or LC Issuer notifies the Company in writing of such increased costs or reductions and of such Lender's or LC Issuer's intention to claim compensation therefor; *provided, further*, that if such adoption or such change giving rise to such increased costs or reduction is retroactive such 90-day period shall be extended to include the period of retroactive effect.

3.2. Changes in Capital Adequacy Regulations. If a Lender or any LC Issuer determines the amount of capital required or expected to be maintained by such Lender, such LC Issuer, any Lending Installation of such Lender or such LC Issuer, or any corporation controlling such Lender or such LC Issuer, is increased as a result of a Change, then, within fifteen (15) days of demand by such Lender, or such LC Issuer, the Borrowers shall pay such Lender or such LC Issuer the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Lender or such LC Issuer determines is attributable to this Agreement, its Outstanding Credit Exposure or its Commitment to make Loans and issue or participate in Facility LCs, as the case may be, hereunder (after taking into account such Lender's or such LC Issuer's policies as to capital adequacy); *provided*, that the Borrowers shall not be required to pay to such Lender or LC Issuer such additional amounts under this Section for any amount incurred as a result of such Change more than 90 days prior to the date that such Lender or LC Issuer notifies the Company in writing of such Change and of such Lender's or LC Issuer's intention to claim compensation therefor; *provided, further*, that if such Change giving rise to such amounts is retroactive such 90-day period shall be extended to include the period of retroactive effect. "**Change**" means (i) any change after the Closing Date in the Risk-Based

Capital Guidelines or (ii) any adoption of, change in, or change in the interpretation or administration of any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the Closing Date which affects the amount of capital required or expected to be maintained by any Lender or any LC Issuer or any Lending Installation or any corporation controlling any Lender or any LC Issuer. “**Risk-Based Capital Guidelines**” means (i) the risk-based capital guidelines in effect in the United States on the Closing Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the July 1988 report of the Basle Committee on Banking Regulation and Supervisory Practices Entitled “International Convergence of Capital Measurements and Capital Standards,” including transition rules, and any amendments to such regulations adopted prior to the Closing Date.

3.3. Availability of Types of Advances. If (x) any Lender determines that maintenance of its Eurodollar Loans at a suitable Lending Installation would violate any applicable law, rule, regulation or directive, whether or not having the force of law, or (y) the Required Lenders determine that (i) deposits of a type and maturity appropriate to match fund Eurodollar Advances are not available or (ii) the interest rate applicable to Eurodollar Advances does not accurately reflect the cost of making or maintaining Eurodollar Advances, or (iii) no reasonable basis exists for determining the Eurodollar Base Rate, then the Administrative Agent shall suspend the availability of Eurodollar Advances and require any affected Eurodollar Advances to be immediately repaid or converted to Floating Rate Advances, subject to the payment of any funding indemnification amounts required by Section 3.4.

3.4. Funding Indemnification. If any payment of a Eurodollar Advance occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurodollar Advance is not made or continued, or a Floating Rate Advance is not converted into a Eurodollar Advance, on the date specified by any Borrower for any reason other than default by the Lenders, or a Eurodollar Advance is not prepaid on the date specified by the applicable Borrower for any reason, the Borrowers will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits acquired to fund or maintain such Eurodollar Advance.

3.5. Taxes.

(i) All payments by the Borrowers to or for the account of any Lender, any LC Issuer or Agent hereunder or under any Note or Facility LC Application shall be made free and clear of and without deduction for any and all Taxes. If any Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Lender, any LC Issuer or Agent, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.5) such Lender, such LC Issuer or Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) such Borrower shall make such deductions, (c) such Borrower shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) such Borrower shall furnish to the Administrative Agent the original copy of a receipt evidencing payment thereof within thirty (30) days after such payment is made.

(ii) In addition, the Borrowers hereby agree to pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any Note or Facility LC Application or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note or Facility LC Application (“**Other Taxes**”).

(iii) The Borrowers hereby agree to indemnify the Agents, the LC Issuers and each Lender for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 3.5) paid by the Agents, the LC Issuers or such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within thirty (30) days of the date the Agents, the LC Issuers or such Lender makes demand therefor pursuant to Section 3.6.

(iv) Each Lender that is not incorporated under the laws of the United States of America or a state thereof (each a “**Non-U.S. Lender**”) agrees that it will, not more than ten (10) Business Days after the date on which it becomes a party to this Agreement, (i) deliver to each of the Company and the Administrative Agent two (2) duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI, certifying in either case that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, and (ii) deliver to each of the Company and the Administrative Agent a United States Internal Revenue Form W-8 or W-9, as the case may be, and certify that it is entitled to an exemption from United States backup withholding tax. Each Non-U.S. Lender further undertakes to deliver to each of the Company and the Administrative Agent (x) renewals or additional copies of such form (or any successor form) on or before the date that such form expires or becomes obsolete, and (y) after the occurrence of any event requiring a change in the most recent forms so delivered by it, such additional forms or amendments thereto as may be reasonably requested by the Company or the Administrative Agent. All forms or amendments described in the preceding sentence shall certify that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, *unless* an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form or amendment with respect to it and such Lender advises the Company and the Administrative Agent in writing that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

(v) For any period during which a Non-U.S. Lender has failed to provide the Company with an appropriate form pursuant to clause (iv), above (unless such failure is due to a change in treaty, law or regulation, or any change in the interpretation or administration thereof by any governmental authority, occurring subsequent to the date on which a form originally was required to be provided), such Non-U.S. Lender shall not be entitled to indemnification under this Section 3.5 with respect to Taxes imposed by the United States, and each Borrower, if required by law to do so, shall be permitted to withhold such Taxes and pay the same to the appropriate United States taxing authority; *provided* that, should a Non-U.S. Lender which is otherwise exempt from or subject to a reduced rate of withholding tax become subject to Taxes because of its failure to deliver a form required under clause (iv), above, the Borrowers shall take

such steps as such Non-U.S. Lender shall reasonably request to assist such Non-U.S. Lender to recover such Taxes.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement or any Note pursuant to the law of any relevant jurisdiction or any treaty shall deliver to the Company (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

(vii) If the IRS or any other governmental authority of the United States or any other country or any political subdivision thereof 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 or properly completed, because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered its exemption from withholding 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, withholding therefor, or otherwise, including penalties and interest, and including taxes imposed by any jurisdiction on amounts payable to the Administrative Agent under this subsection, together with all costs and expenses related thereto (including attorneys' fees and time charges of attorneys for the Administrative Agent, which attorneys may be employees of the Administrative Agent). The obligations of the Lenders under this Section 3.5(vii) shall survive the payment of the Obligations and termination of this Agreement.

(viii) Within 60 days after receipt of the written request of the Company, each Lender, LC Issuer and Agent shall execute and deliver such certificates, forms or other documents, which in each such case can be reasonably furnished by such Lender, LC Issuer or Agent consistent with the facts and which are reasonably necessary to assist any Borrower in applying for refunds of Taxes remitted by such Borrower hereunder.

(ix) Each Lender, LC Issuer and Agent shall also use commercially reasonable efforts to avoid and minimize any amounts which might otherwise be payable by any Borrower pursuant to this Section 3.5, except to the extent that such Lender, LC Issuer or Agent, determines that such efforts would be disadvantageous to such Lender, LC Issuer or Agent, as determined by such Lender, LC Issuer or Agent and which determination, if made in good faith, shall be binding and conclusive on all parties hereto.

(x) To the extent that the payment of any Lender's, LC Issuer's or Agent's Taxes by any Borrower hereunder gives rise from time to time to a Tax Benefit to such Lender, LC Issuer or Agent in any jurisdiction other than the jurisdiction which imposed such Taxes, such Lender, LC Issuer or Agent shall pay to such Borrower the amount of each such Tax Benefit so recognized or received. The amount of each Tax Benefit and, therefore, payment to such Borrower will be determined from time to time by the relevant Lender, LC Issuer or Agent in its sole discretion, which determination shall be binding and conclusive on all parties hereto. Each such payment will be due and payable by such Lender, LC Issuer or Agent to such Borrower within a reasonable time after the filing of the tax return in which such Tax Benefit is recognized or, in the case of any tax refund, after the refund is received; *provided, however*, if at any time

thereafter such Lender, LC Issuer or Agent, is required to rescind such Tax Benefit or such Tax Benefit is otherwise disallowed or nullified, the relevant Borrower shall promptly, after notice thereof from such Lender, LC Issuer or Agent, repay to such Lender, LC Issuer or Agent the amount of such Tax Benefit previously paid to such Lender, LC Issuer or Agent and which has been rescinded, disallowed or nullified. For purposes hereof, the term “**Tax Benefit**” shall mean the amount by which any Lender’s, LC Issuer’s or Agent’s income tax liability for the taxable period in question is reduced below what would have been payable had the relevant Borrower not been required to pay such Lender’s LC Issuer’s or Agent’s Taxes hereunder.

3.6. Lender Statements; Survival of Indemnity. To the extent reasonably possible, each Lender shall designate an alternate Lending Installation with respect to its Eurodollar Loans to reduce any liability of the Borrowers to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of Eurodollar Advances under Section 3.3, so long as such designation is not, in the judgment of such Lender, disadvantageous to such Lender. Each Lender shall deliver a written statement of such Lender to the Company (with a copy to the Administrative Agent) as to the amount due, if any, under Section 3.1, 3.2, 3.4 or 3.5. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Borrowers in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurodollar Loan shall be calculated as though each Lender funded its Eurodollar Loan through the purchase of a deposit of the type, currency and maturity corresponding to the deposit used as a reference in determining the Eurodollar Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable on demand after receipt by the Company of such written statement. The obligations of the Borrowers under Sections 3.1, 3.2, 3.4 and 3.5 shall survive payment of the Obligations and termination of this Agreement.

3.7. Mitigation of Obligations. If any Lender requests compensation under Section 3.2 or if any Borrower is required to pay any additional amount to any Lender or any governmental authority for the account of any Lender pursuant to Section 3.1, then such Lender shall use commercially reasonable efforts to designate a different Lending Installation for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole discretion of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable under Section 3.1 or Section 3.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all costs and expenses incurred by any Lender in connection with such designation or assignment.

ARTICLE IV

CONDITIONS PRECEDENT

4.1. Initial Credit Extension. The Lenders shall not be required to make the initial Credit Extension hereunder unless (a) the representations and warranties contained in Article V are true and correct in all material respects as of such date and (b) the Company has furnished to the Agents with sufficient copies for the Lenders:

- (i) Copies of the articles or certificates of incorporation (or similar Constitutive Documents) of the Company and each Guarantor (each a “Loan Party”), together with all amendments thereto, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of incorporation, as well as any other information required by Section 326 of the USA PATRIOT ACT.

- (ii) Copies, certified by the Secretary or Assistant Secretary of each Loan Party of its by-laws (or similar Constitutive Documents) and of its Board of Directors' resolutions and of resolutions or actions of any other body authorizing the execution of the Loan Documents to which it is a party.
- (iii) An incumbency certificate, executed by the Secretary or Assistant Secretary of each Loan Party, which shall identify by name and title and bear the signatures of the Authorized Officers and any other officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of the Borrowers, to request Loans hereunder, upon which certificate the Agents and the Lenders shall be entitled to rely until informed of any change in writing by the applicable Loan Party.
- (iv) An opening compliance certificate in substantially the form of Exhibit B, signed by the chief financial officer or treasurer of the Company, showing the calculations necessary to determine compliance with this Agreement on the initial Credit Extension Date and stating that on the initial Credit Extension Date (a) no Default or Unmatured Default has occurred and is continuing, (b) all of the representations and warranties in Article V shall be true and correct in all material respects as of such date and (c) no material adverse change in the business, financial condition or operations of the Company or any of its Subsidiaries has occurred since November 30, 2003.
- (v) A certificate in form and substance satisfactory to the Administrative Agent stating that there exists no injunction or temporary restraining order which would prohibit the making of the initial Credit Extensions or any litigation seeking such an injunction or restraining order.
- (vi) A certificate of value, solvency and other appropriate factual information in form and substance reasonably satisfactory to the Administrative Agent and Arranger from the chief financial officer of the Company (on behalf of the Company and the Borrowers) in his or her representative capacity supporting the conclusions that as of the initial funding date the Company and its Subsidiaries on a consolidated basis are Solvent and will be Solvent subsequent to incurring the Indebtedness contemplated under the Loan Documents, will be able to pay its debts and liabilities as they become due and will not be left with unreasonably small working capital for general corporate purposes.
- (vii) Written opinions of Sutherland Asbill & Brennan LLP, special counsel to the Borrowers and each Guarantor, in form and substance satisfactory to the Agents and addressed to the Lenders in substantially the form of Exhibit A.

- (viii) Any Notes requested by a Lender pursuant to Section 2.14 payable to the order of each such requesting Lender.
- (ix) If the initial Credit Extension shall be the issuance of a Facility LC, a properly completed Facility LC Application.
- (x) Written money transfer instructions, in substantially the form of Exhibit D, addressed to the Administrative Agent and signed by an Authorized Officer, together with such other related money transfer authorizations as the Administrative Agent may have reasonably requested.
- (xi) Evidence satisfactory to the Agents that the Existing Credit Agreements shall have been or shall simultaneously on the Closing Date be terminated (except for those provisions that expressly survive the termination thereof) and all loans outstanding and other amounts owed to the lenders or agents thereunder shall have been, or shall simultaneously with the initial Advance hereunder be, paid in full.
- (xii) Such other documents as any Lender or its counsel may have reasonably requested including, without limitation, each document identified on the List of Closing Documents attached hereto as Exhibit E.

4.2. Each Credit Extension. The Lenders shall not (except as otherwise set forth in Section 2.2.4 with respect to Revolving Loans for the purpose of repaying Swing Line Loans) be required to make any Credit Extension unless on the applicable Credit Extension Date:

- (i) There exists no Default or Unmatured Default.
- (ii) The representations and warranties contained in Article V are true and correct in all material respects as of such Credit Extension Date except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all material respects on and as of such earlier date.

Each Borrowing Notice or request for issuance of a Facility LC, or Swing Line Borrowing Notice, as the case may be, with respect to each such Credit Extension shall constitute a representation and warranty by the Borrowers that the conditions contained in Section 4.2(i) and (ii) have been satisfied. Any lender may require a duly completed compliance certificate in substantially the form of Exhibit B as a condition to making a Credit Extension.

4.3. Initial Advance to Each New Subsidiary Borrower. The Lenders shall not be required to make a Credit Extension hereunder to a new Subsidiary Borrower added after the Closing Date unless the Company has furnished or caused to be furnished to the Administrative Agent with sufficient copies for the Lenders:

- (i) The Assumption Letter executed and delivered by such Subsidiary Borrower and containing the written consent of the Borrowers, as contemplated by Section 2.22.

- (ii) Copies, certified by the Secretary, Assistant Secretary, Director or Authorized Officer of the Subsidiary Borrower, of its Board of Directors' resolutions (and/or resolutions of other bodies, if any are deemed necessary by the Administrative Agent) approving the Assumption Letter.
- (iii) An incumbency certificate, executed by the Secretary, Assistant Secretary, Director or Authorized Officer of the Subsidiary Borrower, which shall identify by name and title and bear the signature of the officers of such Subsidiary Borrower authorized to sign the Assumption Letter and the other documents to be executed and delivered by such Subsidiary Borrower hereunder, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by the Company.
- (iv) An opinion of counsel to such Subsidiary Borrower, substantially in the form of Exhibit E hereto.
- (v) Guaranty documentation from such Subsidiary Borrower in form and substance acceptable to the Administrative Agent as required pursuant to Section 6.10.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Company represents and warrants as follows to each Lender and the Agents as of each of (i) the Closing Date, (ii) the date of the initial Credit Extension hereunder (if different from the Closing Date) and (iii) each date as required by Section 4.2:

5.1. Existence and Standing. The Company and each of its Subsidiaries is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except to the extent that the failure to have such standing or authority could not reasonably be expected to have a Material Adverse Effect.

5.2. Authorization and Validity. The Company and each of its Subsidiaries (to the extent applicable) has the power and authority and legal right to execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder, and to file the Loan Documents which have been filed by it as required by this Agreement. The execution and delivery by the Company and any such Subsidiary of the Loan Documents to which it is a party and the performance of its obligations thereunder have been duly authorized by proper proceedings, and the Loan Documents to which such entity is a party constitute legal, valid and binding obligations of such entity enforceable against such entity in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.

5.3. No Conflict; Government Consent. Neither the execution and delivery by the Company or any of its Subsidiaries of the Loan Documents, nor compliance with the provisions

thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Company or any of its Subsidiaries or (ii) the Company's or any Subsidiary's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating agreement or other management agreement, as the case may be, or (iii) the provisions of any indenture, instrument or agreement to which the Company or any of its Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with, or constitute a default under, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Company or a Subsidiary pursuant to the terms of, any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Company or any of its Subsidiaries, is required to be obtained by the Company or any of its Subsidiaries in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by any Borrower of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents.

5.4. Financial Statements. The November 30, 2003 unaudited combined financial statements of the Company and its Subsidiaries heretofore delivered to the Arranger and the Lenders were prepared in accordance with generally accepted accounting principles in effect on the date such statements were prepared (except for the absence of footnotes and subject to year-end audit adjustments) and fairly present in all material respects, the combined financial condition and operations of the Company and its Subsidiaries at such date and the combined results of their operations and cash flows for the three-month period then ended.

5.5. Material Adverse Change. Since November 30, 2003, and except as disclosed on Schedule 5.5, there has been no change in the business, property, financial condition or operations of the Company and its Subsidiaries taken as a whole, which could reasonably be expected to have a Material Adverse Effect.

5.6. Taxes. The Company and its Subsidiaries have filed all United States federal tax returns and all other tax returns which are required to be filed and have paid all taxes due pursuant to said returns or pursuant to any assessment received by the Company or any of its Subsidiaries, except (i) such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with Agreement Accounting Principles or (ii) where the failure to file such return or pay such taxes could not reasonably be expected to have a Material Adverse Effect. No tax liens have been filed and no claims are being asserted with respect to any such taxes. The charges, accruals and reserves on the books of the Company and its Subsidiaries in respect of any taxes or other governmental charges are adequate.

5.7. Litigation and Contingent Obligations. There is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Company or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Credit Extensions or otherwise question the validity of any Loan Document. Other than any liability which could not reasonably be expected to have a Material

Adverse Effect, neither the Company nor any of its Subsidiaries have any contingent obligations not provided for or disclosed in the financial statements referred to in Section 5.4.

5.8. Subsidiaries. Schedule 5.8 (as supplemented from time to time by the Company promptly after the formation or acquisition of any new Subsidiary as permitted under this Agreement) contains an accurate list of all Subsidiaries of the Company as of the Closing Date, setting forth their respective jurisdictions of organization and the percentage of their respective capital stock or other ownership interests owned by the Company or other Subsidiaries. All of the issued and outstanding shares of capital stock or other ownership interests of such Subsidiaries have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

5.9. Accuracy of Information. No information, schedule, exhibit or report furnished by the Company or any of its Subsidiaries to the Arranger, any Agent or Lender (including, without limitation, the Company's Confidential Information Memorandum dated March 2004) in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

5.10. Regulation U. Neither the Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate of buying or carrying margin stock (within the meaning of Regulations U or X); and after applying the proceeds of each Advance, margin stock (as defined in Regulation U) constitutes less than twenty-five (25%) of the value of those assets of the Company and its Subsidiaries which are subject to any limitation on sale or pledge, or any other restriction hereunder.

5.11. Material Agreements. Neither the Company nor any Subsidiary is a party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party, which default could reasonably be expected to have a Material Adverse Effect.

5.12. Compliance With Laws. The Company and its Subsidiaries have complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property, except to the extent that the failure to comply could not reasonably be expected to have a Material Adverse Effect.

5.13. Ownership of Properties. On the Closing Date, the Company and its Subsidiaries will have good title, free of all Liens other than Permitted Liens, to all of the Property and assets reflected in the Company's most recent consolidated financial statements provided to the Arranger and the Lenders as owned by the Company and its Subsidiaries, other than Property and assets disposed of in the ordinary course of business.

5.14. ERISA; Foreign Pension Matters. The sum of (a) the Unfunded Liabilities of all Plans and (b) the present value of the aggregate unfunded liabilities to provide the accrued benefits under all Foreign Pension Plans do not in the aggregate exceed \$75,000,000. Each Plan and each Foreign Pension Plan complies in all material respects with all applicable requirements of law and regulations, no Reportable Event has occurred with respect to any Plan, neither the Company nor any other member of its Controlled Group has withdrawn from any Multiemployer Plan or initiated steps to do so, and no steps have been taken to terminate any Plan, except to the extent that such non-compliance, Reportable Event, withdrawal or termination could not reasonably be expected to result in liability of the Company or any of its Subsidiaries individually or in the aggregate in an amount greater than \$75,000,000.

5.15. Plan Assets; Prohibited Transactions. No Borrower is an entity deemed to hold “plan assets” within the meaning of 29 C.F.R. § 2510.3-101 of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code), and neither the execution of this Agreement nor the making of Loans hereunder gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code, except to the extent that such event or prohibited transaction could not reasonably be expected to result in liability of the Company or any of its Subsidiaries individually or in the aggregate in an amount greater than \$75,000,000.

5.16. Environmental Matters.

(a) In the ordinary course of its business, the officers of the Company consider the effect of Environmental Laws on the business of the Company and its Subsidiaries, in the course of which they identify and evaluate potential risks and liabilities accruing to the Company and its Subsidiaries due to Environmental Laws. On the basis of this consideration, the Company has concluded that Environmental Laws cannot reasonably be expected to have a Material Adverse Effect, except as set forth on Schedule 5.16. Except as set forth on Schedule 5.16, neither the Company nor any Subsidiary has received any notice to the effect that its operations are not in compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect.

(b) The Company and each of its Subsidiaries have obtained all necessary governmental permits, licenses and approvals which are material to the operations conducted on their respective properties, including without limitation, all required permits, licenses and approvals for (i) the emission of air pollutants or contaminants, (ii) the treatment or pretreatment and discharge of waste water or storm water, (iii) the treatment, storage, disposal or generation of hazardous wastes, (iv) the withdrawal and usage of ground water or surface water, and (v) the disposal of solid wastes, except where a failure to obtain such permits, licenses and approvals would not result in a Material Adverse Effect.

5.17. Investment Company Act. Neither the Company nor any Subsidiary is an “investment company” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

5.18. Public Utility Holding Company Act. Neither the Company nor any Subsidiary is a “holding company” or a “subsidiary company” of a “holding company”, or an “affiliate” of a “holding company” or of a “subsidiary company” of a “holding company”, within the meaning of the Public Utility Holding Company Act of 1935, as amended.

5.19. Insurance. The Property of the Company and its Subsidiaries is insured with financially sound and reputable insurance companies, in such amounts, with such deductibles and covering such properties and risks as is required under Section 6.6.

5.20. Solvency. After giving effect to (i) the Credit Extensions to be made on the Closing Date or such other date as Credit Extensions requested hereunder are made, (ii) the other transactions contemplated by this Agreement and the other Loan Documents, and (iii) the payment and accrual of all transaction costs with respect to the foregoing, the Company and its Subsidiaries taken as a whole are Solvent.

5.21. Patriot Act. Neither the Company nor any Subsidiary or Affiliate of any of the foregoing is a country, individual or entity named on the Specifically Designated National and Blocked Persons (SDN) List issued by the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

ARTICLE VI

COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:

6.1. Reporting. The Company will maintain, for itself and each Subsidiary, a system of accounting established and administered in accordance with generally accepted accounting principles, and furnish to the Lenders:

- (i) Within ninety (90) days (or such later date as may be permitted by the Securities and Exchange Commission) after the close of each of its fiscal years, an audit report certified by independent certified public accountants acceptable to the Required lenders and with such certifications to be free of exceptions and qualifications not acceptable to the Required Lenders, prepared in accordance with Agreement Accounting Principles on a consolidated basis for itself and its Subsidiaries, including a balance sheet as of the end of such period, related statements of income, shareholders' equity and cash flows.
- (ii) Within forty-five (45) days (or such later date as may be permitted by the Securities and Exchange Commission) after the close of the first three (3) quarterly periods of each of its fiscal years, for itself and its Subsidiaries, a consolidated unaudited balance sheet as at the close of each such period and consolidated statements of income and cash flows for the period from the beginning of such fiscal year to the end of such quarter, all certified as to fairness of presentation, compliance with Agreement Accounting Principles and consistency by its chief financial officer, chief accounting officer or treasurer.

- (iii) Together with the financial statements required under Sections 6.1(i) and (ii), a compliance certificate in substantially the form of Exhibit B signed by its chief financial officer, chief accounting officer or treasurer showing the calculations necessary to determine compliance with this Agreement and stating that no Default or Unmatured Default exists, or if any Default or Unmatured Default exists, stating the nature and status thereof.
- (iv) As soon as possible and in any event within ten (10) days after the Company knows that any Reportable Event has occurred with respect to any Plan, or any material unfunded liability has arisen with respect to any Foreign Pension Plan, a statement, signed by the chief financial officer or treasurer of the Company, describing said Reportable Event or material unfunded liability and the action which the Company proposes to take with respect thereto, which, in any case, could reasonably be expected to give rise to liability of more than \$10,000,000 on the part of the Company or any of its Subsidiaries.
- (v) As soon as possible and in any event within ten (10) days after receipt by the Company, a copy of (a) any notice or claim to the effect that the Company or any of its Subsidiaries is or may be liable to any Person as a result of the release by the Company, any of its Subsidiaries, or any other Person of any toxic or hazardous waste or substance into the environment, and (b) any notice alleging any violation of any federal, state or local environmental, health or safety law or regulation by the Company or any of its Subsidiaries, which, in either case, could reasonably be expected to have a Material Adverse Effect.
- (vi) Promptly upon the furnishing thereof to the shareholders of the Company, copies of all financial statements, reports and proxy statements so furnished.
- (vii) Promptly upon the filing thereof, copies of all registration statements (other than exhibits thereto and any registration statements on Form S-8 or its equivalent) or other regular reports not otherwise provided pursuant to this Section 6.1 which the Company or any of its Subsidiaries files with the Securities and Exchange Commission.
- (viii) Upon the request of any Agent, prior to the execution thereof, draft copies of the Receivables Purchase Documents and, promptly after execution thereof, copies of such Receivables Purchase Documents and all material amendments thereto.
- (ix) Promptly upon any officer of the Company obtaining knowledge of the institution of, or written threat of, any action, suit, proceeding, governmental investigation or arbitration against or affecting the Company or any of its Subsidiaries or any property of the Company or any of its Subsidiaries, which action, suit, proceeding, investigation or arbitration exposes, or in the case of multiple actions, suits, proceedings, investigations or arbitrations arising out of the same general allegations or circumstances which expose, in the Company's reasonable judgment, the Company or any of its Subsidiaries to liability in an amount aggregating \$25,000,000 or more, give written notice thereof to the

Administrative Agent and the Lenders and provide such other information as may be reasonably available to the Company (without jeopardizing any attorney-client privilege by disclosure thereof) to enable each Lender and the Administrative Agent and its counsel to evaluate such matters.

- (x) Such other information (including non-financial information) as any Agent or Lender may from time to time reasonably request (except such plans and forecasts which have not been made available by the Company to its creditors).

6.2. Use of Proceeds. The Company will, and will cause each Subsidiary to, use the proceeds of the Credit Extensions for general corporate purposes, including for working capital, refinancing the Indebtedness under the Existing Credit Agreements, commercial paper liquidity support and Permitted Acquisitions, and to pay fees and expenses incurred in connection with this Agreement. The Borrowers shall use the proceeds of Credit Extensions in compliance with all applicable legal and regulatory requirements and any such use shall not result in a violation of any such requirements, including, without limitation, Regulations T, U and X, the Securities Act of 1933 and the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

6.3. Notice of Default. Within five (5) Business Days after an Authorized Officer becomes aware thereof, the Company will, and will cause each Subsidiary to, give notice in writing to the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise, which could reasonably be expected to have a Material Adverse Effect.

6.4. Conduct of Business. The Company will, and will cause each Subsidiary to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as conducted by the Company or its Subsidiaries as of the Closing Date, and, except as otherwise permitted by Section 6.12, do all things necessary to remain duly incorporated or organized, validly existing and (to the extent such concept applies to such entity) in good standing as a corporation, partnership or limited liability company in its jurisdiction of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except where the failure to maintain such good standing or authority could not reasonably be expected to have a Material Adverse Effect; *provided* that nothing in this Section shall prevent the Company and its Subsidiaries from discontinuing any line of business or liquidating, dissolving or disposing of any Subsidiary if (i) no Default or Unmatured Default is in existence or would be caused thereby and (ii) the Board of Directors of the Company determines in good faith that such termination, liquidation, dissolution or disposition is in the best interest of the Company and its Subsidiaries taken as a whole.

6.5. Taxes. The Company will, and will cause each Subsidiary to, file on a timely basis complete and correct United States federal and material foreign, state and local tax returns required by law and pay when due all material taxes, assessments and governmental charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with Agreement Accounting Principles.

6.6. Insurance. The Company will, and will cause each Subsidiary to, maintain with financially sound and reputable insurance companies insurance on their Property in such amounts and covering such risks as is consistent with sound business practice, and the Company will furnish to any Lender upon request full information as to the insurance carried.

6.7. Compliance with Laws; Maintenance of Plans. The Company will, and will cause each Subsidiary to, (i) comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, and (ii) establish, maintain and operate all Plans to comply in all material respects with the provisions of ERISA and the Code, and the regulations and interpretations thereunder, where in the case of either (i) or (ii) above the failure to so comply could reasonably be expected to have a Material Adverse Effect.

6.8. Maintenance of Properties. The Company will, and will cause each Subsidiary to, do all things necessary to maintain, preserve, protect and keep its Property material to the conduct of its business in good repair, working order and condition, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times.

6.9. Inspection; Keeping of Books and Records.

(i) The Company will, and will cause each Subsidiary to, permit the Agents and the Lenders, by their respective representatives and agents, to inspect any of the Property, books and financial records of the Company and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Company and each Subsidiary, and to discuss the affairs, finances and accounts of the Company and each Subsidiary with, and to be advised as to the same by, their respective officers at such reasonable times and intervals as any Agent or Lender may designate. If a Default has occurred and is continuing, the Company, upon the Administrative Agent's request, shall turn over copies of any such records to the Administrative Agent or its representatives. Unless a Default has occurred and is then continuing, each Lender shall give the Company not less than three (3) Business Days' prior written notice of its intent to conduct such visit or inspection. To the extent that any Lender, in the course of such visit or inspection, obtains possession of any proprietary information pertaining to the Company or any Subsidiary, such Lender shall handle such information in accordance with the requirements of Section 10.11.

(ii) The Company shall keep and maintain, and cause each of its Subsidiaries to keep and maintain, in all material respects, proper books of record and account in which entries in conformity with Agreement Accounting Principles shall be made of all dealings and transactions in relation to their respective businesses and activities (except that any Foreign Subsidiary may comply with local accounting principles).

6.10. Addition of Guarantors. As promptly as possible but in any event within thirty (30) days after any Domestic Subsidiary (other than any SPV) becomes a Material Subsidiary of the Company, the Company shall cause each such Material Subsidiary to deliver to the Administrative Agent a duly executed supplement to the Guaranty pursuant to which such Material Subsidiary agrees to be bound by the terms and provisions of the Guaranty; *provided*,

that if at any time (i) the aggregate amount of the book value of assets of all Domestic Subsidiaries that are not Guarantors exceeds ten percent (10%) of the aggregate book value of the Consolidated Total Assets of the Company and its Subsidiaries, or (ii) the Consolidated Net Worth of all Domestic Subsidiaries that are not Guarantors exceeds ten percent (10%) of the Consolidated Net Worth of the Company and its Subsidiaries, or (iii) the assets of all Domestic Subsidiaries that are not Guarantors contributed more than ten percent (10%) of the Company's Consolidated Net Income, in each case as reported in the most recent annual audited financial statements delivered to the Lenders pursuant to Section 6.1(i) (or, prior to the delivery of the first of such annual audited financial statements, as reported in the Combined Balance Sheets), the Company shall cause additional Domestic Subsidiaries (other than any SPV) to become parties to the Guaranty as Guarantors thereunder to eliminate such excess.

6.11. Subsidiary Indebtedness. The Company will not permit any Subsidiary to create, incur or suffer to exist any Indebtedness, except:

- (i) The obligations arising under the Loan Documents.
- (ii) Indebtedness existing on the Closing Date and described on Schedule 6.11, and Permitted Refinancing Indebtedness in respect thereof.
- (iii) Indebtedness owed (a) to the Company or any Guarantor by any Guarantor, (b) to any Subsidiary that is not a Guarantor by any other Subsidiary that is not a Guarantor, and (c) to the Company or any Guarantor by any Subsidiary that is not a Guarantor in an aggregate amount under this clause (c) not to exceed ten percent (10%) of the Company's Consolidated Net Worth as reported on the most recent audited financial statements delivered to the Lenders pursuant to Section 6.1(i) (or, prior to the delivery of the first such audited financial statements under Section 6.1(i), as reported on the Combined Balance Sheets).
- (iv) Receivables Facility Attributed Indebtedness in an aggregate amount not to exceed \$250,000,000.
- (v) Indebtedness in an aggregate amount not to exceed \$50,000,000 incurred or assumed for the purpose of financing or refinancing all or any part of the cost of acquiring or constructing any specific fixed asset of such Subsidiary (including without limitation Capital Leases); *provided*, that such Indebtedness (a) is incurred (1) at a time when no Default or Unmatured Default has occurred and is continuing or would result from such incurrence and (2) within eighteen (18) months after the acquisition or construction of such fixed asset, and (b) does not exceed 100% of the total cost of such acquisition or construction (plus interest, fees and closing costs related thereto).
- (vi) Additional Indebtedness (including, without limitation, Indebtedness secured by Liens permitted under Section 6.13(xv)) in an aggregate amount not to exceed \$150,000,000.

6.12. Consolidations and Mergers; Permitted Acquisitions.

6.12.1. Consolidations and Mergers. Each Borrower agrees that it will not, nor will the Company permit any Subsidiary to, consolidate or merge with or into any other Person, *provided* that if, after giving effect to any of the following, no Default will be in existence: (i) any Subsidiary may merge or consolidate with the Company if the Company is the corporation surviving such merger, (ii) any Borrower may merge or consolidate with any other Borrower, (iii) any Subsidiary which is a Guarantor may merge or consolidate with any other Subsidiary which is a Guarantor, (iv) any Subsidiary which is not a Borrower or Guarantor may merge or consolidate with any other Subsidiary which is not a Borrower or Guarantor, (v) any Subsidiary which is not a Borrower or a Guarantor may merge or consolidate with any other Subsidiary which is a Borrower or a Guarantor, if the Borrower or Guarantor, as the case may be, is the corporation surviving such merger, and (vi) any Borrower or Subsidiary may merge or consolidate with any other Person if (a) such Person was organized under the laws of the United States of America or one of its States, (b) either (1) such Borrower or Subsidiary is the corporation surviving such merger or (2) such Person becomes a Subsidiary as a result of such merger or consolidation and expressly assumes in writing (in form and substance reasonably acceptable to the Administrative Agent) all obligations of such Borrower or Subsidiary, as the case may be, under the Loan Documents executed by such Borrower or Subsidiary, *provided*, in any merger or consolidation involving a Domestic Subsidiary, the survivor shall be a Domestic Subsidiary, and in any merger or consolidation involving a Foreign Subsidiary, the survivor shall be a Foreign Subsidiary, and (c) immediately after giving effect to such merger, no Default shall have occurred and be continuing.

6.12.2. Permitted Acquisitions. Each Borrower agrees that it will not, nor will the Company permit any Subsidiary to, make any Acquisitions other than Acquisitions meeting the following requirements or otherwise approved by the Required Lenders (which approval shall not be unreasonably withheld or delayed) (each such Acquisition constituting a "**Permitted Acquisition**"):

- (i) as of the date of the consummation of such Acquisition, no Default or Unmatured Default shall have occurred and be continuing or would result from such Acquisition, and the representation and warranty contained in Section 5.10 shall be true both before and after giving effect to such Acquisition;
- (ii) such Acquisition is consummated on a non-hostile basis pursuant to a negotiated acquisition agreement approved by the board of directors or other applicable governing body of the seller or entity to be acquired, and no material challenge to such Acquisition (excluding the exercise of appraisal rights) shall be pending or threatened by any shareholder or director of the seller or entity to be acquired;
- (iii) the business to be acquired in such Acquisition is similar or related to one or more of the lines of business in which the Company and its Subsidiaries are engaged on the Closing Date;

- (iv) as of the date of the consummation of such Acquisition, (x) all material governmental and corporate approvals required in connection therewith shall have been obtained and (y) the Company shall be in compliance with Section 6.10; and
- (v) not less than ten (10) days prior to each such Acquisition the Purchase Price of which shall be \$25,000,000 or more, the Company shall have delivered to the Administrative Agent a pro forma consolidated balance sheet, income statement and cash flow statement of the Company and its Subsidiaries (the “**Acquisition Pro Forma**”), based on the Company’s most recent financial statements delivered pursuant to Section 6.1(i) and using historical financial statements for the acquired entity provided by the seller(s) or which shall be complete and shall fairly present, in all material respects, the financial condition and results of operations and cash flows of the Company and its Subsidiaries in accordance with Agreement Accounting Principles, but taking into account such acquisition and the funding of all Credit Extensions in connection therewith, and such Acquisition Pro Forma shall reflect that, on a pro forma basis, the Leverage Ratio for the four fiscal quarter period reflected in the compliance certificate most recently delivered to the Administrative Agent pursuant to Section 6.1(iii) prior to the consummation of such acquisition (computed after giving effect to such acquisition and all Credit Extensions funded in connection therewith as if made on the first day of such period) shall not exceed 3.25 to 1.00.

6.13. Liens. The Company will not, nor will it permit any Subsidiary to, create, incur, or suffer to exist any Lien in, of or on the Property of the Company or any of its Subsidiaries, except:

- (i) Liens for taxes, assessments or governmental charges or levies on its Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with Agreement Accounting Principles shall have been set aside on its books.
- (ii) Liens imposed by law, such as landlords’, wage earners’, carriers’, warehousemen’s and mechanics’ liens and other similar liens, arising in the ordinary course of business which secure payment of obligations not more than sixty (60) days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with Agreement Accounting Principles shall have been set aside on its books.
- (iii) Liens arising out of pledges or deposits under worker’s compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation or to secure the performance of tenders, statutory obligations, surety or appeal bonds, bids, leases, government contracts and other similar obligations (provided that such Liens do not secure any Indebtedness).
- (iv) Utility easements, building restrictions, zoning ordinances and such other encumbrances or charges against real property as are of a nature generally

existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the Company or its Subsidiaries.

- (v) Liens existing on the Closing Date and described on Schedule 6.13.
- (vi) Liens, if any, securing the Loans and other Obligations hereunder.
- (vii) Liens arising under the Receivables Purchase Documents.
- (viii) Liens existing on any specific fixed asset of any Subsidiary of the Company at the time such Subsidiary becomes a Subsidiary and not created in contemplation of such event.
- (ix) Liens on any specific fixed asset securing Indebtedness incurred or assumed for the purpose of financing or refinancing all or any part of the cost of acquiring or constructing such asset; *provided* that such Lien attaches to such asset concurrently with or within eighteen (18) months after the acquisition or completion or construction thereof.
- (x) Liens existing on any specific fixed asset of any Subsidiary of the Company at the time such Subsidiary is merged or consolidated with or into the Company or any Subsidiary and not created in contemplation of such event.
- (xi) Liens existing on any specific fixed asset prior to the acquisition thereof by the Company or any Subsidiary and not created in contemplation thereof.
- (xii) Liens arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any Lien permitted by any of the foregoing clause (v) or clauses (vii) through (xi); *provided* that (a) such Indebtedness is not secured by any additional assets, and (b) the amount of such Indebtedness secured by any such Lien is not increased.
- (xiii) Inchoate Liens arising under ERISA to secure current service pension liabilities as they are incurred under the provisions of Plans from time to time in effect.
- (xiv) Liens securing intercompany Indebtedness owing by (a) any Guarantor to the Company or any other Guarantor and (b) any Subsidiary that is not a Guarantor to the Company or any Wholly-Owned Subsidiary of the Company.
- (xv) Liens not otherwise permitted under this Section 6.13 securing Indebtedness in an aggregate principal amount at any time outstanding, together with the amount of Indebtedness permitted under Section 6.11(vi) (but without duplication), does not exceed \$150,000,000.

6.14. Transactions with Affiliates. The Company will not, and will not permit any Subsidiary to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate (other than the

Company or any Subsidiary of the Company) except in the ordinary course of business and pursuant to the reasonable requirements of the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than the Company or such Subsidiary would obtain in a comparable arm's-length transaction, other than Permitted Receivables Transfers.

6.15. Financial Contracts. The Company shall not and shall not permit any of its consolidated Subsidiaries to enter into any Financial Contract, other than Financial Contracts pursuant to which the Company or such Subsidiary hedged its actual or anticipated interest rate, foreign currency or commodity exposure existing or anticipated at the time thereof.

6.16. ERISA. Except to the extent that such act, or failure to act would not result singly, or in the aggregate, after taking into account all other such acts or failures to act, in a liability of the Company or any of its Subsidiaries which could reasonably be expected to exceed \$75,000,000 as reported on the most recent audited financial statements delivered to the Lenders pursuant to Section 6.1(i) (or, prior to the delivery of the first such audited financial statements under Section 6.1(i), as reported on the Combined Balance Sheets), the Company shall not (i) engage, or permit any Controlled Group member to engage, in any prohibited transaction described in Sections 406 of ERISA or 4975 of the Code for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the DOL; (ii) permit to exist any accumulated funding deficiency (as defined in Sections 302 of ERISA and 412 of the Code); (iii) fail, or permit any member of its Controlled Group to fail, to pay timely required contributions or annual installments due with respect to any waived funding deficiency of any Plan; (iv) terminate, or permit any member of its Controlled Group to terminate, any Plan which would result in any liability of the Company or any member of its Controlled Group under Title IV of ERISA; (v) fail to make any contribution or payment to any Multiemployer Plan which the Company or any member of its Controlled Group may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; (vi) fail, or permit any member of its Controlled Group to fail, to pay any required installment or any other payment required under Section 412 of the Code on or before the due date for such installment or other payment; (vii) amend, or permit any member of its Controlled Group to amend, a Plan resulting in an increase in current liability for the plan year such that the Company or any member of its Controlled Group is required to provide security to such Plan under Section 401(a)(29) of the Code.

6.17. Environmental Compliance. The Company will not become, or permit any Subsidiary to become, subject to any liabilities or costs which could reasonably be expected to have a Material Adverse Effect arising out of or related to (i) the release or threatened release at any location of any contaminant into the environment, or any remedial action in response thereto, or (ii) any violation of any environmental, health or safety requirements of law (including, without limitation, any Environmental Laws).

6.18. Financial Covenants.

6.18.1. Maximum Leverage Ratio. The Company shall not permit the ratio (the "**Leverage Ratio**") as of the end of each fiscal quarter ending on or after February 29, 2004 of (i) Indebtedness For Borrowed Money of the Company and its consolidated Subsidiaries to (ii)

EBITDA to be greater than 3.50 to 1.00; provided that if at any time the Leverage Ratio shall exceed 3.25 to 1.00 for two consecutive fiscal quarters, the Company shall not permit the Leverage Ratio to exceed 3.25 to 1.00 as of the end of the two succeeding fiscal quarters, subsequent to which the maximum Leverage Ratio permitted hereunder shall revert to 3.50 to 1.00 but giving effect to any future applications of the foregoing proviso. The Leverage Ratio shall be calculated as of the last day of each fiscal quarter based upon (1) for Indebtedness For Borrowed Money, as of the last day of each such fiscal quarter; and (2) for EBITDA, the actual amount for the four-quarter period ending on such day, and shall be calculated, with respect to Permitted Acquisitions, on a pro forma basis using historical audited and reviewed unaudited financial statements obtained from the seller(s) in such Permitted Acquisition, broken down by fiscal quarter in the Company's reasonable judgement and satisfactory to the Administrative Agent and as reported to the Administrative Agent.

6.18.2. Minimum Interest Expense Coverage Ratio. The Company shall maintain a ratio (the "**Interest Expense Coverage Ratio**") of (i) EBIT to (ii) Interest Expense for the applicable period of at least 2.50 to 1.00 as of the end of each fiscal quarter ending on or after February 29, 2004. The Interest Expense Coverage Ratio shall be calculated as of the last day of each fiscal quarter for the actual amount of EBIT and Interest Expense for the four-quarter period ending on such day, and shall be calculated, with respect to Permitted Acquisitions, on a pro forma basis using historical audited and reviewed unaudited financial statements obtained from the seller(s) in such Permitted Acquisition, broken down by fiscal quarter in the Company's reasonable judgement and satisfactory to the Administrative Agent.

ARTICLE VII

DEFAULTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1. Breach of Representations or Warranties. Any representation or warranty made or deemed made by or on behalf of the Company or any of its Subsidiaries to the Lenders or the Agents under or in connection with this Agreement, any Credit Extension, or any certificate or information delivered in connection with this Agreement or any other Loan Document shall be false in any material respect on the date as of which made.

7.2. Failure to Make Payments When Due. Nonpayment of (i) principal of any Loan when due, (ii) any Reimbursement Obligation within one (1) Business Day after the same becomes due, or (iii) interest upon any Loan or any Facility Fee, Utilization Fee, LC Fee or other Obligations under any of the Loan Documents within five (5) Business Days after such interest, fee or other Obligation becomes due.

7.3. Breach of Covenants. The breach by any Borrower of any of the terms or provisions of Section 6.1(iii), Sections 6.2 through 6.4, (with respect to the Company's or any of its Subsidiaries' existence), Section 6.9(i), Sections 6.11 through 6.13 or Section 6.18.

7.4. Other Breaches. The breach by any Borrower (other than a breach which constitutes a Default under another Section of this Article VII) of any of the terms or provisions

of this Agreement or any other Loan Document which is not remedied within thirty (30) days after the earlier to occur of (i) written notice thereof has been given to the Company by the Administrative Agent at the request of any Lender or (ii) an Authorized Officer otherwise becomes aware of any such breach; *provided, however*, that such cure period for such breach (other than a breach of the terms or provisions of Section 6.10) shall be extended for a period of time, not to exceed an additional thirty (30) days, reasonably sufficient to permit such Borrower to cure such failure if such failure cannot be cured within the initial 30-day period but reasonably could be expected to be capable of cure within such additional thirty (30) days, such Borrower has commenced efforts to cure such failure during the initial 30-day period and such Borrower is diligently pursuing such cure.

7.5. Default as to Other Indebtedness.

(i) Failure of the Company or any of its Subsidiaries to pay when due (whether at stated maturity, by acceleration or otherwise) any Indebtedness which, individually or in the aggregate exceeds \$25,000,000 (or the equivalent in currencies other than Dollars) (such Indebtedness being referred to as “**Material Indebtedness**”); or

(ii) Any Material Indebtedness of the Company or any of its Subsidiaries shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or

(iii) The Company or any of its Material Subsidiaries shall fail to pay, or shall admit in writing its inability to pay, its debts generally as they become due; or

(iv) The default by the Company or any of its Subsidiaries in the performance (beyond the applicable grace period with respect thereto, if any) of any term, provision or condition contained in any agreement under which any such Material Indebtedness was created or is governed, or any other event shall occur or condition exist, the effect of which default or event is to cause, or to permit the holder or holders of such Material Indebtedness to cause such Material Indebtedness to become due prior to its stated maturity.

7.6. Voluntary Bankruptcy; Appointment of Receiver; Etc. The Company or any of its Material Subsidiaries shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any Substantial Portion of its Property, (iv) institute any proceeding seeking an order for relief with respect to it under the Federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) take any corporate or partnership action to authorize or effect any of the foregoing actions set forth in this Section 7.6, or (vi) fail to contest in good faith any appointment or proceeding described in Section 7.7.

7.7. Involuntary Bankruptcy; Appointment of Receiver; Etc. Without the application, approval or consent of the Company or any of its Material Subsidiaries, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Company or any of its Subsidiaries or any Substantial Portion of its Property, or a proceeding described in Section 7.6(iv) shall be instituted against the Company or any of its Material Subsidiaries and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.

7.8. Judgments. The Company or any of its Subsidiaries shall fail within thirty (30) days after the final entry thereof to pay, bond or otherwise discharge one or more (i) judgments or orders for the payment of money (except to the extent covered by independent third-party insurance as to which the insurer has not disclaimed coverage) in the aggregate in excess of \$75,000,000, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgment(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith.

7.9. Unfunded Liabilities. The sum of (a) the Unfunded Liabilities of all Plans and (b) the present value of the aggregate unfunded liabilities to provide the accrued benefits under all Foreign Pension Plans exceeds in the aggregate an amount equal to \$75,000,000, or any Reportable Event shall occur in connection with any Plan if the liability of the Company or any of its Subsidiaries resulting from such Reportable Event exceeds in the aggregate an amount equal to \$75,000,000.

7.10. Other ERISA Liabilities. The Company or any other member of its Controlled Group has incurred withdrawal liability or become obligated to make contributions to a Multiemployer Plan in an amount which, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Company or any other member of its Controlled Group as withdrawal liability (determined as of the date of such notification), exceeds in the aggregate an amount equal to \$75,000,000.

7.11. Environmental Matters. The Company or any of its Subsidiaries shall (i) be the subject of any proceeding or investigation pertaining to the release by the Company, any of its Subsidiaries or any other Person of any toxic or hazardous waste or substance into the environment, or (ii) violate any Environmental Law, which, in the case of an event described in clause (i) or clause (ii), could reasonably be expected to have a Material Adverse Effect.

7.12. Change in Control. Any Change in Control shall occur.

7.13. Receivables Purchase Document Events. Other than at the request of an Affiliate of the Company party thereto (as permitted thereunder), an event shall occur which (i) permits the investors in a Receivables Purchase Facility to require amortization or liquidation of the facility or (ii) results in the termination of reinvestment or re-advancing of collections or proceeds of Receivables and Related Security shall occur under the Receivables Purchase Documents, and, in the case of an event described in clause (i) or clause (ii), the Company or any Subsidiary thereof (other than any SPV) has liability in excess of \$75,000,000.

7.14. Guarantor Revocation. Any guarantor of the Obligations shall deny, disaffirm, terminate or revoke any of its obligations under the applicable Guaranty (except in accordance with Section 11.15 hereof) or breach any of the material terms of such Guaranty.

ARTICLE VIII

ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1. Acceleration.

(i) If any Default described in Section 7.6 or 7.7 occurs with respect to any Borrower, the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuers to issue Facility LCs shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of the Administrative Agent, any LC Issuer or any Lender, and the Borrowers will be and become thereby unconditionally obligated, without any further notice, act or demand, to pay to the Administrative Agent an amount in immediately available funds, which funds shall be held in the Facility LC Collateral Account, equal to the Collateral Shortfall Amount. If any other Default occurs, the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) may (a) terminate or suspend the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuers to issue Facility LCs, or declare the Obligations to be due and payable, or both, whereupon the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrowers hereby expressly waive, and (b) upon notice to the Borrowers and in addition to the continuing right to demand payment of all amounts payable under this Agreement, make demand on the Borrowers to pay, and the Borrowers will, forthwith upon such demand and without any further notice or act, pay to the Administrative Agent the Collateral Shortfall Amount, which funds shall be deposited in the Facility LC Collateral Account.

(ii) If, within thirty (30) days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans and the obligation and power of the LC Issuers to issue Facility LCs hereunder as a result of any Default (other than any Default as described in Section 7.6 or 7.7 with respect to any Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, the Required Lenders (in their sole discretion) shall so direct, the Administrative Agent shall, by notice to the Borrowers, rescind and annul such acceleration and/or termination.

8.2. Amendments. Subject to the provisions of this Article VIII, the Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and the Borrowers may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to the Loan Documents or changing in any manner the rights of the Lenders or the Borrowers hereunder or thereunder or waiving any Default hereunder or thereunder; *provided, however*, that no such supplemental agreement shall, without the consent of each Lender affected thereby:

- (i) Extend the final maturity of any Loan, or extend the expiry date of any Facility LC to a date after the Facility Termination Date or forgive all or any portion of

the principal amount thereof or any Reimbursement Obligation related thereto, or reduce the rate or extend the time of payment of interest or fees thereon or Reimbursement Obligations related thereto (other than a waiver of the application of the default rate of interest or LC Fees pursuant to Section 2.12 hereof).

- (ii) Change the percentage specified in the definition of Required Lenders or any other percentage of Lenders specified to be the applicable percentage in this Agreement to act on specified matters or otherwise amend the definitions of “Required Lenders” or “Pro Rata Share”.
- (iii) Extend the Facility Termination Date, or increase the amount or otherwise extend the term of the Commitment of any Lender hereunder or the commitment to issue Facility LCs.
- (iv) Permit any Borrower to assign its rights or obligations under this Agreement.
- (v) Other than pursuant to a transaction permitted by the terms of this Agreement, release any guarantor of the Obligations or any substantial portion of the collateral, if any, securing the Obligations.
- (vi) Amend this Section 8.2.

No amendment of any provision of this Agreement relating to any Agent shall be effective without the written consent of such Agent. No amendment of any provision of this Agreement relating to any LC Issuer shall be effective without the written consent of such LC Issuer. No amendment of any provision of this Agreement relating to the Swing Line Lender or any Swing Line Loans shall be effective without the written consent of the Swing Line Lender. The Administrative Agent may waive payment of the fee required under Section 13.3.2 without obtaining the consent of any other party to this Agreement.

8.3. Preservation of Rights. No delay or omission of the Lenders, the LC Issuers or Agents to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Credit Extension notwithstanding the existence of a Default or Unmatured Default or the inability of the Borrowers to satisfy the conditions precedent to such Credit Extension shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by, or by the Administrative Agent with the consent of, the requisite number of Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Agents, the LC Issuers and the Lenders until all of the Obligations have been paid in full.

ARTICLE IX

JOINT AND SEVERAL OBLIGATIONS

9.1. **Joint and Several Liability.** Each Borrower agrees that it is jointly and severally, directly and primarily liable to the Administrative Agent, the Lenders and the LC Issuers for payment, performance and satisfaction in full of the Obligations and that such liability is independent of the duties, obligations, and liabilities of the other Borrowers. The Administrative Agent, the Lenders and the LC Issuers may jointly bring a separate action or actions on each, any, or all of the Obligations against any Borrower, whether action is brought against the other Borrowers or whether the other Borrowers are joined in such action. In the event that any Borrower fails to make any payment of any Obligations on or before the due date thereof, the other Borrowers immediately shall cause such payment to be made or each of such Obligations to be performed, kept, observed, or fulfilled.

9.2. **Primary Obligation; Waiver of Marshalling.** This Agreement and the Loan Documents to which Borrowers are a party are a primary and original obligation of each Borrower, are not the creation of a surety relationship, and are an absolute, unconditional, and continuing promise of payment and performance which shall remain in full force and effect without respect to future changes in conditions, including any change of law or any invalidity or irregularity with respect to this Agreement or the Loan Documents to which Borrowers are a party. Each Borrower agrees that its liability under this Agreement and the Loan Documents to which it is a party shall be immediate and shall not be contingent upon the exercise or enforcement by the Administrative Agent, the Lenders and the LC Issuers of whatever remedies they may have against the other Borrowers. Each Borrower consents and agrees that the Administrative Agent, the Lenders and the LC Issuers shall be under no obligation to marshal any assets of any Borrower against or in payment of any or all of the Obligations.

9.3. **Financial Condition of Borrowers.** Each Borrower acknowledges that it is presently informed as to the financial condition of the other Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower hereby covenants that it will continue to keep informed as to the financial condition of the other Borrowers, the status of the other Borrowers and of all circumstances which bear upon the risk of nonpayment. Absent a written request from any Borrower to the Administrative Agent, the Lenders and the LC Issuers for information, each Borrower hereby waives any and all rights it may have to require the Administrative Agent, the Lenders and the LC Issuers to disclose to such Borrower any information which the Administrative Agent, the Lenders and the LC Issuers may now or hereafter acquire concerning the condition or circumstances of the other Borrowers.

9.4. **Continuing Liability.** Subject to the provisions of Section 2.22, the liability of each Borrower under this Agreement and the Loan Documents to which such Borrower is a party includes Obligations arising under successive transactions continuing, compromising, extending, increasing, modifying, releasing, or renewing the Obligations, changing the interest rate, payment terms, or other terms and conditions thereof, or creating new or additional Obligations after prior Obligations have been satisfied in whole or in part. To the maximum extent permitted

by law, each Borrower hereby waives any right to revoke its liability under this Agreement and Loan Documents as to future indebtedness.

9.5. Additional Waivers. Each Borrower absolutely, unconditionally, knowingly, and expressly waives (a) notice of acceptance hereof; (b) notice of any Loans or other financial accommodations made or extended under this Agreement and the Loan Documents to which Borrowers are a party or the creation or existence of any Obligations; (c) notice of the amount of the Obligations, subject, however, to each Borrower's right to make inquiry of the Administrative Agent, the Lenders and the LC Issuers to ascertain the amount of the Obligations at any reasonable time; (d) notice of any adverse change in the financial condition of the other Borrowers or of any other fact that might increase such Borrower's risk hereunder; (e) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents to which Borrowers are a party; (f) notice of any Default or Unmatured Default; (g) all other notices (except, in each case, if such notice is specifically required to be given to any Borrower hereunder or under the Loan Documents to which Borrowers are a party and demands to which such Borrower might otherwise be entitled); (h) any right of subrogation such Borrower has or may have as against the other Borrowers with respect to the Obligations; (i) any right to proceed against the other Borrowers or any other Person, now or hereafter, for contribution, indemnity, reimbursement, or any other suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which such Borrower may now have or hereafter have as against the other Borrowers with respect to the Obligations; and (j) any right to proceed or seek recourse against or with respect to any property or asset of the other Borrowers.

9.6. Settlements or Releases. Each Borrower consents and agrees that, without notice to or by such Borrower, and without affecting or impairing the liability of such Borrower hereunder, the Administrative Agent, the Lenders and the LC Issuers may, by action or inaction (i) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce this Agreement and the Loan Documents, or any part thereof, with respect to the other Borrowers or any Guarantor; (ii) release the other Borrowers or any Guarantor or grant other indulgences to the other Borrowers or any Guarantor in respect thereof; or (iii) release or substitute any Guarantor, if any, of the Obligations, or enforce, exchange, release, or waive any security, if any, for the Obligations or any other guaranty of the Obligations, or any portion thereof.

9.7. No Election. The Administrative Agent, the Lenders and the LC Issuers shall have the right to seek recourse against each Borrower to the fullest extent provided for herein, and no election by the Administrative Agent, the Lenders and the LC Issuers to proceed in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of the Administrative Agent's, any Lenders' or any LC Issuers' right to proceed in any other form of action or proceeding or against other parties unless the Administrative Agent, the Lenders and the LC Issuers have expressly waived such right in writing.

9.8. Joint Loan Account. At the request of Borrowers to facilitate and expedite the administration and accounting processes and procedures of the Loans and the Facility LCs, the Administrative Agent, the Lenders and the LC Issuers have agreed, in lieu of maintaining separate loan accounts on the Administrative Agent's, the Lenders' and the LC Issuers' books in

the name of each of the Borrowers, that the Administrative Agent, the Lenders and the LC Issuers may maintain a single loan account under the name of all of the Borrowers (the "Joint Loan Account"). All Loans shall be charged to the Joint Loan Account, together with all interest and other charges as permitted under and pursuant to this Agreement. The Joint Loan Account shall be credited with all repayments of Obligations received by the Administrative Agent, the Lenders and the LC Issuers, on behalf of Borrowers, from any Borrower pursuant to the terms of this Agreement.

9.9. Apportionment of Proceeds of Loans. Each Borrower expressly agrees and acknowledges that the Administrative Agent, the Lenders and the LC Issuers shall have no responsibility to inquire into the correctness of the apportionment or allocation of or any disposition by any of Borrowers of (a) the Loans, the Reimbursement Obligations or any other Obligation, or (b) any of the expenses and other items charged to the Joint Loan Account pursuant to this Agreement. The Loans, the Reimbursement Obligations and the other Obligations and such expenses and other items shall be made for the collective, joint, and several account of Borrowers and shall be charged to the Joint Loan Account.

9.10. The Administrative Agent, Lenders and LC Issuers Held Harmless. Each Borrower agrees and acknowledges that the administration of this Agreement on a combined basis, as set forth herein, is being done as an accommodation to the Borrowers and at their request, and that the Administrative Agent, the Lenders and the LC Issuers shall incur no liability to any Borrower as a result thereof. To induce the Administrative Agent, the Lenders and the LC Issuers to do so, and in consideration thereof, each Borrower hereby agrees to indemnify and hold the Administrative Agent, the Lenders and the LC Issuers harmless from and against any and all liability, expense, loss, damage, claim of damage, or injury, made against the Administrative Agent, the Lenders and the LC Issuers by Borrowers or by any other Person, arising from or incurred by reason of such administration of the Agreement on a combined basis, except to the extent such liability, expense, loss, damage, claim of damage, or injury solely arises from the gross negligence or willful misconduct or breach of the obligations under the Loan Documents of the Administrative Agent, the Lenders and the LC Issuers, as applicable.

9.11. Borrowers' Integrated Operations. Each Borrower represents and warrants to the Administrative Agent, the Lenders and the LC Issuers that the collective administration of the Loans is being undertaken by the Administrative Agent, the Lenders and the LC Issuers pursuant to this Agreement because Borrowers are integrated in their operation and administration and require financing on a basis permitting the availability of credit from time to time to the Borrowers. Each Borrower will derive benefit, directly and indirectly, from such collective administration and credit availability because the successful operation of each Borrower is enhanced by the continued successful performance of the integrated group.

ARTICLE X

GENERAL PROVISIONS

10.1. Survival of Representations. All representations and warranties of the Borrowers contained in this Agreement shall survive the making of the Credit Extensions herein contemplated.

10.2. Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, neither any LC Issuer nor any Lender shall be obligated to extend credit to the Borrowers in violation of any limitation or prohibition provided by any applicable statute or regulation.

10.3. Headings. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

10.4. Entire Agreement. The Loan Documents embody the entire agreement and understanding among the Borrowers, the Agents, the LC Issuers and the Lenders and supersede all prior agreements and understandings among the Borrowers, the Agents, the LC Issuers and the Lenders relating to the subject matter thereof other than the fee letter described in Section 11.13.

10.5. Several Obligations; Benefits of this Agreement. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Agents are authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, *provided, however*, that the parties hereto expressly agree that the Arranger shall enjoy the benefits of the provisions of Sections 10.6, 10.10, 11.11, and 11.13 to the extent specifically set forth therein and shall have the right to enforce such provisions on its own behalf and in its own name to the same extent as if it were a party to this Agreement.

10.6. Expenses; Indemnification.

(i) The Borrowers shall reimburse the Administrative Agent and the Arranger for any costs, internal charges and out-of-pocket expenses (including reasonable attorneys' and paralegals' fees, time charges and expenses of attorneys and paralegals for the Administrative Agent and Arranger, which attorneys and paralegals may not be employees of the Administrative Agent or the Arranger, and expenses of and fees for other advisors and professionals engaged by the Administrative Agent or the Arranger) paid or incurred by the Administrative Agent or the Arranger in connection with the investigation, preparation, negotiation, documentation, execution, delivery, syndication, distribution (including, without limitation, via the internet), review, amendment, modification, administration and collection of the Loan Documents. The Borrowers also agree to reimburse the Agents, the Arranger, the LC Issuers and the Lenders for any reasonable costs, internal charges and out-of-pocket expenses (including reasonable attorneys' and paralegals' fees, time charges and expenses of attorneys and paralegals for the Agents, the Arranger, the LC Issuers and the Lenders, which attorneys and paralegals may not be employees of the Agents, the Arranger, the LC Issuers or the Lenders) paid or incurred by the Agents, the Arranger, any LC Issuers or any Lender in connection with the collection and enforcement of the Loan Documents. Notwithstanding anything herein or in any other Loan Document to the contrary, any and all provisions in this Agreement or in any other Loan Document that obligates the Company or any of its Subsidiaries to pay the attorney's fees or expenses of another Person shall be deemed to obligate the Company or such Subsidiary (as the

case may be) to pay the actual and reasonable attorney's fees and expenses of such Person and such fees and expenses shall be calculated without giving effect to any statutory presumptions as to the reasonableness or the amount thereof that may apply under applicable law.

(ii) The Borrowers hereby further agree to indemnify the Agents, the Arranger, the LC Issuers, each Lender, their respective affiliates, and each of their directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all reasonable expenses of litigation or preparation therefor whether or not the Agents, the Arranger, the LC Issuers, any Lender or any affiliate is a party thereto, and all reasonable attorneys' and paralegals' fees, time charges and expenses of attorneys and paralegals of the party seeking indemnification, which attorneys and paralegals may or may not be employees of such party seeking indemnification) which any of them may pay or incur arising out of or relating to this Agreement, the other Loan Documents or any other transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Credit Extension hereunder, except to the extent that they are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the party seeking indemnification or by reason of such indemnified party's breach of its obligations under the Loan Documents, or are the result of claims of any Lender against other Lenders or against the Administrative Agent not attributable to the Company's or any of its Subsidiary's actions and for which the Company and its Subsidiaries otherwise have no liability. The obligations of the Borrowers under this Section 10.6 shall survive the termination of this Agreement.

10.7. Numbers of Documents. All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders, to the extent that the Administrative Agent deems necessary.

10.8. Accounting. Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with Agreement Accounting Principles. If any changes in generally accepted accounting principles are hereafter required or permitted and are adopted by the Company or any of its Subsidiaries with the agreement of its independent certified public accountants and such changes result in a change in the method of calculation of any of the financial covenants, tests, restrictions or standards herein or in the related definitions or terms used therein ("Accounting Changes"), the parties hereto agree, at the Company's request, to enter into negotiations, in good faith, in order to amend such provisions in a credit neutral manner so as to reflect equitably such changes with the desired result that the criteria for evaluating the Company's and its Subsidiaries' financial condition shall be the same after such changes as if such changes had not been made; *provided, however*, until such provisions are amended in a manner reasonably mutually satisfactory to the Company, the Administrative Agent and the Required Lenders, no Accounting Change shall be given effect in such calculations and all financial statements and reports required to be delivered hereunder shall be prepared in accordance with Agreement Accounting Principles without taking into account such Accounting Changes. In the event such amendment is entered into, all references in this Agreement to Agreement Accounting Principles shall mean generally accepted accounting principles as of the date of such amendment.

10.9. Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

10.10. Nonliability of Lenders. The relationship between the Borrowers on the one hand and the Lenders, the LC Issuers and the Agents on the other hand shall be solely that of borrower and lender. None of the Agents, the Arranger, the LC Issuers or any Lender shall have any fiduciary responsibilities to the Borrowers. None of the Agents, the Arranger, the LC Issuers or any Lender undertakes any responsibility to the Borrowers to review or inform the Borrowers of any matter in connection with any phase of any Borrower's business or operations. The Borrowers agree that none of the Agents, the Arranger, the LC Issuers or any Lender shall have liability to the Borrowers (whether sounding in tort, contract or otherwise) for losses suffered by the Borrowers in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final, non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct or breach of the obligations under the Loan Documents of the party from which recovery is sought. None of the Agents, the Arranger, the LC Issuers or any Lender shall have any liability with respect to, and the Borrowers hereby waive, releases and agrees not to sue for, any special, indirect, consequential or punitive damages suffered by the Borrowers in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

10.11. Confidentiality. Each Lender agrees to hold any confidential information which it may receive from any Borrower pursuant to this Agreement in confidence, except for disclosure to the following Persons for the following purposes (and under the terms of confidence that are substantially the same as this Section in the case of any disclosure covered by clause (i), (ii), (vi) or (vii) below): (i) to other Lenders and their respective Affiliates in connection with the transactions contemplated by this Agreement, (ii) to legal counsel, accountants, and other professional advisors to such Lender in connection with the transactions contemplated by this Agreement or to a Transferee or prospective Transferee in connection with the transactions contemplated by this Agreement, (iii) to regulatory officials as required by applicable law as determined by such Lender (which determination shall be conclusive and binding on all parties hereto), (iv) to any Person as required by law, regulation, or legal process as determined by such Lender (which determination shall be conclusive and binding on all parties hereto), (v) to any Person to the extent required in any legal proceeding to which such Lender is a party as determined by such Lender (which determination shall be conclusive and binding on all parties hereto), (vi) to such Lender's direct or indirect contractual counterparties in swap agreements relating to the Loans or to legal counsel, accountants and other professional advisors to such counterparties, and (vii) permitted by Section 13.4.

10.12. Lenders Not Utilizing Plan Assets. None of the consideration used by any of the Lenders, any LC Issuer or Designated Lenders to make its Credit Extensions constitutes for any purpose of ERISA or Section 4975 of the Code assets of any "plan" as defined in Section 3(3) of ERISA or Section 4975 of the Code and the rights and interests of each of the Lenders, the LC

Issuers and Designated Lenders in and under the Loan Documents shall not constitute such “plan assets” under ERISA.

10.13. Nonreliance. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U) as collateral in the extension or maintenance of the credit provided for herein.

10.14. Disclosure. The Borrowers and each Lender hereby acknowledge and agree that Bank One and/or its respective Affiliates and certain of the other Lenders and/or their respective Affiliates from time to time may hold investments in, make other loans to or have other relationships with the Borrowers and its Affiliates.

10.15. Subordination of Intercompany Indebtedness. The Borrowers agree that any and all claims of any Borrower against any Guarantor with respect to any “Intercompany Indebtedness” (as hereinafter defined), any endorser, obligor or any other guarantor of all or any part of the Obligations, or against any of its properties shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Obligations; *provided* that, and not in contravention of the foregoing, so long as no Default is continuing the Borrowers may make loans to and receive payments in the ordinary course with respect to such Intercompany Indebtedness to the extent otherwise permitted under this Agreement. Notwithstanding any right of any Borrower to ask, demand, sue for, take or receive any payment from any Guarantor, all rights, liens and security interests of the Borrowers, whether now or hereafter arising and howsoever existing, in any assets of any Guarantor (whether constituting part of any collateral given to any Agent or any Lender to secure payment of all or any part of the Obligations or otherwise) shall be and are subordinated to the rights of the Agents, the LC Issuers and the Lenders in those assets. No Borrower shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Obligations (other than contingent indemnity obligations) shall have been fully paid and satisfied (in cash) and all financing arrangements pursuant to all of the Loan Documents have been terminated. If all or any part of the assets of any Guarantor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of any Guarantor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of any Guarantor is dissolved or if substantially all of the assets of any Guarantor are sold (other than in a transaction permitted under this Agreement), then, and in any such event (such events being herein referred to as an “**Insolvency Event**”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of any Guarantor to any Borrower (“**Intercompany Indebtedness**”) shall be paid or delivered directly to the Administrative Agent for application on any of the Obligations, due or to become due, until such Obligations (other than contingent indemnity obligations) shall have first been fully paid and satisfied (in cash). Should any payment, distribution, security or instrument or proceeds thereof be received by any Borrower upon or with respect to the Intercompany Indebtedness after any Insolvency Event and prior to the satisfaction of all of the Obligations (other than contingent indemnity obligations) and the termination of all financing arrangements pursuant to all of the Loan Documents, such Borrower shall receive and hold the same in trust, as trustee, for the benefit of the Agents, the LC Issuers and the Lenders and shall forthwith deliver the same to the

Administrative Agent, for the benefit of the Agents, the LC Issuers and the Lenders, in precisely the form received (except for the endorsement or assignment of such Borrower where necessary), for application to any of the Obligations, due or not due, and, until so delivered, the same shall be held in trust by such Borrower as the property of the Agents, the LC Issuers and the Lenders. If any Borrower fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Each Borrower agrees that until the Obligations (other than the contingent indemnity obligations) have been paid in full (in cash) and satisfied and all financing arrangements pursuant to any Loan Document among the Borrowers and the Agents, the LC Issuers and the Lenders have been terminated, no Borrower will assign or transfer to any Person (other than the Administrative Agent or any other transferee that agrees to be bound by the terms of this Agreement in writing (in form and substance acceptable to the Administrative Agent)) any claim any Borrower has or may have against any Guarantor.

10.16. USA PATRIOT ACT NOTIFICATION. The following notification is provided to the Borrowers pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for each Borrower: When any Borrower opens an account, if such Borrower is an individual, the Administrative Agent and the Lenders will ask for such Borrower's name, residential address, tax identification number, date of birth, and other information that will allow the Administrative Agent and the Lenders to identify such Borrower, and, if such Borrower is not an individual, the Administrative Agent and the Lenders will ask for such Borrower's name, tax identification number, business address, and other information that will allow the Administrative Agent and the Lenders to identify such Borrower. The Administrative Agent and the Lenders may also ask, if any Borrower is an individual, to see such Borrower's driver's license or other identifying documents, and, if such Borrower is not an individual, to see such Borrower's legal organizational documents or other identifying documents.

ARTICLE XI

THE AGENTS

11.1. Appointment; Nature of Relationship. Bank One, NA is hereby appointed by each of the Lenders as the Administrative Agent hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. Wachovia Bank, N.A. is hereby appointed by each of the Lenders as the Syndication Agent hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Syndication Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. Each of LaSalle Bank National Association and Key Bank National Association is

hereby appointed by the Lenders as a Co-Documentation Agent hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Co-Documentation Agents to act as the contractual representatives of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. Each Agent agrees to act as such contractual representative upon the express conditions contained in this Article XI. Notwithstanding the use of the defined term “**Administrative Agent**”, “**Syndication Agent**” or “**Co-Documentation Agent**”, it is expressly understood and agreed that no Agent shall have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that each Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In their capacities as the Lenders’ contractual representative, the Agents (i) do not hereby assume any fiduciary duties to any of the Lenders, (ii) are “representatives” of the Lenders within the meaning of Section 9-102 of the Uniform Commercial Code and (iii) are acting as independent contractors, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert no claim against any Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

11.2. Powers. Each Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to such Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Agents shall have no implied duties or fiduciary duties to the Lenders or any obligation to the Lenders to take any action thereunder, except any action specifically provided by the Loan Documents to be taken by the applicable Agents.

11.3. General Immunity. No Agent or any of its respective directors, officers, agents or employees shall be liable to the Borrowers, the Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final, non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

11.4. No Responsibility for Loans, Recitals, etc. No Agent or any of its respective directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Agents or any of them; (d) the existence or possible existence of any Default or Unmatured Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any collateral security; or (g) the financial condition of the Borrowers or any guarantor of any of the Obligations or of any of the Company’s or any such guarantor’s respective Subsidiaries. The Agents shall have no duty to disclose to the Lenders information that is not required to be furnished by any Borrower to any

Agent at such time, but is voluntarily furnished by any Borrower to such Agent (either in its capacity as an Agent or in its individual capacity).

11.5. Action on Instructions of Lenders. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders (or all of the Lenders in the event that and to the extent that this Agreement expressly requires such), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Agents shall be under no duty to take any discretionary action permitted to be taken by any of them pursuant to the provisions of this Agreement or any other Loan Document unless they shall be requested in writing to do so by the Required Lenders (or all of the Lenders in the event that and to the extent that this Agreement expressly requires such). Each Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

11.6. Employment of Agents and Counsel. Any Agent may execute any of its respective duties as an Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Each Agent shall be entitled to advice of counsel concerning the contractual arrangement between such Agent and the Lenders and all matters pertaining to such Agent's duties hereunder and under any other Loan Document.

11.7. Reliance on Documents; Counsel. Each Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by such Agent, which counsel may be employees of such Agent.

11.8. Agents' Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify each Agent ratably in proportion to the Lenders' Pro Rata Shares of Aggregate Commitment (or, after the Facility Termination Date, of the Aggregate Outstanding Credit Exposure) (i) for any amounts not reimbursed by the Borrowers for which such Agent is entitled to reimbursement by the Borrowers under the Loan Documents, (ii) for any other expenses incurred by such Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, but not limited to, for any expenses incurred by such Agent in connection with any dispute between such Agent and any Lender or between two or more of the Lenders) and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against such Agent in connection with any dispute between such Agent and any Lender or between two or more of the Lenders), or the

enforcement of any of the terms of the Loan Documents or of any such other documents, *provided* that (i) no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final, non-appealable judgment in a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Agent and (ii) any indemnification required pursuant to Section 3.5(vii) shall, notwithstanding the provisions of this Section 11.8, be paid by the relevant Lender in accordance with the provisions thereof. The obligations of the Lenders under this Section 11.8 shall survive payment of the Obligations and termination of this Agreement.

11.9. Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Unmatured Default hereunder unless such Agent has received written notice from a Lender or the Borrowers referring to this Agreement describing such Default or Unmatured Default and stating that such notice is a “notice of default”. In the event that any Agent receives such a notice, such Agent shall give prompt notice thereof to the Lenders.

11.10. Rights as a Lender. In the event any Agent is a Lender, such Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Commitment and its Credit Extensions as any Lender and may exercise the same as though it were not an Agent, and the term “Lender” or “Lenders” shall, at any time when any Agent is a Lender, unless the context otherwise indicates, include such Agent in its individual capacity. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Company or any of its Subsidiaries in which the Company or such Subsidiary is not restricted hereby from engaging with any other Person.

11.11. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon any Agent, the Arranger or any other Lender and based on the financial statements prepared by the Company and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon any Agent, the Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents.

11.12. Successor Agents. Any Agent may resign at any time by giving written notice thereof to the Lenders and the Company, such resignation to be effective upon the appointment of a successor Agent or, if no successor Agent has been appointed, forty-five (45) days after the retiring Agent gives notice of its intention to resign. Any Agent may be removed at any time with or without cause by written notice received by such Agent from the Required Lenders, such removal to be effective on the date specified by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint, on behalf of the Borrowers and the Lenders, a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders within thirty (30) days after the resigning Agent’s giving notice of its intention to resign, then the resigning Agent may appoint, on behalf of the Borrowers and the Lenders, a successor Agent. Notwithstanding the previous sentence, any Agent may at any time, without the consent of any Borrower or any Lender, appoint any of its

Affiliates which is a commercial bank as its successor Agent hereunder. If an Agent has resigned or been removed and no successor Agent has been appointed, the Lenders may perform all the duties of such Agent hereunder and the Borrowers shall make all payments in respect of the Obligations to the applicable Lender if there is no Administrative Agent and for all other purposes shall deal directly with the Lenders. No successor Agent shall be deemed to be appointed hereunder until such successor Agent has accepted the appointment. Any such successor Agent shall be a commercial bank having capital and retained earnings of at least \$100,000,000. Upon the acceptance of any appointment as an Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Agent. Upon the effectiveness of the resignation or removal of an Agent, the resigning or removed Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Agent, the provisions of this Article XI shall continue in effect for the benefit of such Agent in respect of any actions taken or omitted to be taken by it while it was acting as an Agent hereunder and under the other Loan Documents. In the event that there is a successor to the Administrative Agent by merger, or the Administrative Agent assigns its duties and obligations to an Affiliate pursuant to this Section 11.12, then (a) the term "Prime Rate" as used in this Agreement shall mean the prime rate, base rate or other analogous rate of the new Administrative Agent and (b) the references to "Bank One" in the definitions of "Eurodollar Base Rate" and "Prime Rate" and in the last sentence of Section 2.13 shall be deemed to be a reference to such successor Administrative Agent in its individual capacity.

11.13. Agent and Arranger Fees. The Company agrees to pay to the Administrative Agent and the Arranger, for their respective accounts, the fees agreed to by the Company, the Administrative Agent and the Arranger pursuant to that certain letter agreement dated on or about February 17, 2004 or as otherwise agreed from time to time.

11.14. Delegation to Affiliates. The Borrowers and the Lenders agree that any Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which the applicable Agent is entitled under Articles IX and X.

11.15. Release of Guarantors. Upon the liquidation or dissolution of any Guarantor, or the sale of all of the Capital Stock of any Guarantor owned by the Company and its Subsidiaries, in each case which does not violate the terms of any Loan Document or is consented to in writing by the Required Lenders or all of the Lenders, as applicable, such Guarantor shall be automatically released from all obligations under the Guaranty and any other Loan Documents to which it is a party (other than contingent indemnity obligations), and upon at least five (5) Business Days' prior written request by the Company, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the applicable Guarantor from its obligations under the Guaranty and such other Loan Documents; *provided, however*, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's reasonable opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Guarantor without recourse or warranty, and (ii) such

release shall not in any manner discharge, affect or impair the Obligations of the Borrowers, any other Guarantor's obligations under the Guaranty, or, if applicable, any obligations of the Company or any Subsidiary in respect of the proceeds of any such sale retained by the Company or any Subsidiary.

ARTICLE XII

SETOFF; RATABLE PAYMENTS

12.1. Setoff. In addition to, and without limitation of, any rights of the Lenders under applicable law, if any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender or (to the extent permitted by applicable law) any Affiliate of any Lender to or for the credit or account of any Borrower may be offset and applied toward the payment of the Obligations owing to such Lender, whether or not the Obligations, or any part thereof, shall then be due.

12.2. Ratable Payments. If any Lender, whether by setoff or otherwise, has payment made to it upon its Outstanding Credit Exposure (other than payments received pursuant to Section 3.1, 3.2, 3.4 or 3.5) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a participation in the Aggregate Outstanding Credit Exposure held by the other Lenders so that after such purchase each Lender will hold its Pro Rata Share of the Aggregate Outstanding Credit Exposure. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to their respective Pro Rata Shares of the Aggregate Outstanding Credit Exposure. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

ARTICLE XIII

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

13.1. Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrowers and the Lenders and their respective successors and assigns permitted hereby, except that (i) no Borrower shall have the right to assign its rights or obligations under the Loan Documents without the prior written consent of each Lender, (ii) any assignment by any Lender must be made in compliance with Section 13.3, and (iii) any transfer by participation must be made in compliance with Section 13.2. Any attempted assignment or transfer by any party not made in compliance with this Section 13.1 shall be null and void, unless such attempted assignment or transfer is treated as a participation in accordance with Section 13.3.2. The parties to this Agreement acknowledge that clause (ii) of this Section 13.1 relates only to absolute assignments and this Section 13.1 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a Fund, any pledge or

assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee; *provided, however*, that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 13.3. The Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 13.3; *provided, however*, that the Administrative Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

13.2. Participations.

13.2.1. Permitted Participants; Effect. Any Lender may at any time sell to one or more banks or other entities (“**Participants**”) participating interests in any Outstanding Credit Exposure owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Outstanding Credit Exposure and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrowers under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrowers and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under the Loan Documents.

13.2.2. Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver with respect to any Outstanding Credit Exposure or Commitment in which such Participant has an interest which would require consent of all of the Lenders pursuant to the terms of Section 8.2 or of any other Loan Document.

13.2.3. Benefit of Certain Provisions. The Borrowers agree that each Participant shall be deemed to have the right of setoff provided in Section 12.1 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, *provided* that each Lender shall retain the right of setoff provided in Section 12.1 with respect to the amount of participating interests sold to each Participant. The Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 12.1, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 12.2 as if each Participant were a Lender. The Borrowers further agree that each Participant shall be entitled to the benefits of

Sections 3.1, 3.2, 3.4, 3.5, 10.6 and 10.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.3, provided that (i) a Participant shall not be entitled to receive any greater payment under Section 3.1, 3.2 or 3.5 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account, unless the sale of such interest to such Participant is made with the prior written consent of the Company, and (ii) any Participant not incorporated under the laws of the United States of America or any State thereof agrees to comply with the provisions of Section 3.5 to the same extent as if it were a Lender.

13.3. Assignments.

13.3.1. Permitted Assignments. Any Lender may at any time assign to one or more banks or other entities (“**Purchasers**”) all or any part of its rights and obligations under the Loan Documents. Such assignment shall be evidenced by an agreement substantially in the form of Exhibit C or in such other form as may be agreed to by the parties thereto (each such agreement, an “**Assignment Agreement**”). Each such assignment with respect to a Purchaser which is not a Lender or an Affiliate of a Lender or an Approved Fund shall either be in an amount equal to the entire applicable Commitment and Outstanding Credit Exposure of the assigning Lender or (unless each of the Company and the Administrative Agent otherwise consents) be in an aggregate amount not less than \$5,000,000. The amount of the assignment shall be based on the Commitment or Outstanding Credit Exposure (if the Commitment has been terminated) subject to the Assignment Agreement, determined as of the date of such assignment or as of the “Trade Date,” if the “Trade Date” is specified in the Assignment Agreement.

13.3.2. Consents. The consent of the Company shall be required prior to an assignment becoming effective unless the Purchaser is a Lender, an Affiliate of a Lender or an Approved Fund, provided that the consent of the Company shall not be required if a Default has occurred and is continuing or if such assignment is in connection with the physical settlement of credit derivative transactions, which credit derivative transactions shall have been entered into by the applicable Lender in connection with such Lender’s management of its credit portfolio in the ordinary course of business. The consent of the Administrative Agent shall be required prior to an assignment becoming effective unless the Purchaser is a Lender, an Affiliate of a Lender or an Approved Fund. Any consent required under this Section 13.3.2 shall not be unreasonably withheld or delayed.

13.3.3. Effect; Effective Date. Upon (i) delivery to the Administrative Agent of an Assignment Agreement, together with any consents required by Sections 13.3.1 and 13.3.2, and (ii) payment of a \$3,500 fee to the Administrative Agent for processing such assignment (unless such fee is waived by the Administrative Agent or unless such assignment is made to such assigning Lender’s Affiliate), such assignment shall become effective on the effective date specified in such Assignment Agreement. The Assignment Agreement shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Commitment and Outstanding Credit Exposure under such Assignment Agreement constitutes “plan assets” as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be “plan assets” under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders

and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the transferor Lender shall be released with respect to the Commitment and Outstanding Credit Exposure assigned to such Purchaser without any further consent or action by any Borrower, the Lenders or the Administrative Agent. In the case of an assignment covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.3 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 13.2. Upon the consummation of any assignment to a Purchaser pursuant to this Section 13.3.3, the transferor Lender, the Administrative Agent and the Borrowers shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Commitments, as adjusted pursuant to such assignment.

13.3.4. The Register. The Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in Chicago, Illinois a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender, and participations of each Lender in Facility LCs, pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers at any reasonable time and from time to time upon reasonable prior notice.

13.4. Dissemination of Information. The Borrowers authorize each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Lender's possession concerning the creditworthiness of the Company and its Subsidiaries, including without limitation any information contained in any reports or other information delivered by any Borrower pursuant to Section 6.1; *provided* that each Transferee and prospective Transferee agrees to be bound by Section 10.11 of this Agreement.

13.5. Tax Treatment. If any interest in any Loan Document is transferred to any Transferee which is not incorporated under the laws of the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5(iv).

ARTICLE XIV

NOTICES

14.1. **Notices.** Except as otherwise permitted by Section 2.14 with respect to borrowing notices, all notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing) and shall be given to such party: (x) in the case of the initial Borrowers, the Agents or any Lender party hereto as of the Closing Date, at its respective address or facsimile number set forth on the signature pages hereof, (y) in the case of any Lender that becomes a party hereto pursuant to Section 13.3, at its address or facsimile number set forth in the applicable Assignment Agreement or, if none is provided therein, in its administrative questionnaire or (z) in the case of any party, at such other address or facsimile number as such party may hereafter specify for the purpose by notice to the Administrative Agent and the Company in accordance with the provisions of this Section 14.1. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by United States mail, 72 hours after such communication is deposited in such mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified in this Section; *provided* that notices to the Administrative Agent under Article II shall not be effective until received. For all purposes under this Agreement and the other Loan Documents, (A) notice to the Administrative Agent from any Borrower shall not be deemed to be effective until actually received by the Administrative Agent, and (B) delivery of any notice to the Company shall be deemed to have been delivered to the Borrowers.

14.2. **Change of Address.** The Borrowers, the Agents and any Lender may each change the address for service of notice upon it by a notice in writing to the other parties hereto.

ARTICLE XV

COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the initial Borrowers, the Agents, the LC Issuers and the Lenders and each party has notified the Agents by facsimile transmission or telephone that it has taken such action.

ARTICLE XVI

CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

16.1. **CHOICE OF LAW.** THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, 735 ILCS 105/5-1 ET SEQ., BUT OTHERWISE

WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

16.2. CONSENT TO JURISDICTION. EACH BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND EACH BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENTS, ANY LC ISSUER OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY BORROWER AGAINST THE AGENTS, ANY LC ISSUER OR ANY LENDER OR ANY AFFILIATE OF THE AGENTS, ANY LC ISSUER OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS OR THE CITY IN WHICH THE PRINCIPAL OFFICE OF SUCH AGENT, LENDER OR AFFILIATE, AS THE CASE MAY BE, IS LOCATED.

16.3. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWERS, THE AGENTS, EACH LC ISSUER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

[Signature Pages Follow]

IN WITNESS WHEREOF, the initial Borrowers, the Lenders, the LC Issuers and the Agents have executed this Agreement as of the date first above written.

ACUITY BRANDS, INC., as a Borrower

By: _____ /s/ Dan Smith

Name:

Title:

Acuity Brands, Inc.
1170 Peachtree Street, NE
Suite 2400
Atlanta, Georgia 30309-7649
Attention: Mr. Dan Smith
Phone: 404-853-1423
Fax: 404-853-1430
E-mail: dan.smith@acuitybrands.com

with a copy to:

Acuity Brands, Inc.
1170 Peachtree Street, NE
Suite 2400
Atlanta, Georgia 30309-7649
Attention: Mr. Barry R. Goldman
Phone: 404-853-1415
Fax: 404-853-1015
E-mail: barry.goldman@acuitybrands.com

By: _____ /s/ Dan Smith

Name:

Title:

Acuity Lighting Group, Inc.
1170 Peachtree Street, NE
Suite 2400
Atlanta, Georgia 30309-7649
Attention: Mr. Dan Smith
Phone: 404-853-1423
Fax: 404-853-1430
E-mail: dan.smith@acuitybrands.com

with a copy to:

Acuity Brands, Inc.
1170 Peachtree Street, NE
Suite 2400
Atlanta, Georgia 30309-7649
Attention: Mr. Barry R. Goldman
Phone: 404-853-1415
Fax: 404-853-1015
E-mail: barry.goldman@acuitybrands.com

BANK ONE, NA (Main Office Chicago), as the Administrative Agent and as a Lender

By: _____ /s/ Tim J. King

Name:

Title:

1 Bank One Plaza
Chicago, IL 60670

Attention: Tim J. King

Phone: (312) 732-4973

Fax: (312) 732-6894

E-mail: tim_j_king@bankone.com

WACHOVIA BANK, N.A., as the Syndication Agent and as a Lender

By: _____ /s/ Jorge Gonzalez

Name: Jorge Gonzalez
Title: Managing Director

301 South College Street
NC0760 5th Floor
Charlotte, NC 28288

Attention: Brian Jones
Phone: (704) 383-6666
Fax: (704) 383-6647
E-mail: brian.jones@wachovia.com

LASALLE BANK NATIONAL ASSOCIATION, as a Co-Documentation Agent and as a Lender

By: _____ /s/ Mark Veach

Name: Mark Veach

Title: First Vice President

Address: 30 S. Meridian Street
Suite 800
Indianapolis, IN 46204

Attention: Mark Veach

Phone: (317) 756-7011

Fax: (317) 756-7021

E-mail: mark.veach@abnamro.com

KEY BANK NATIONAL ASSOCIATION, as a Co-Documentation Agent and as a Lender

By: _____ /s/ Marianne T. Meil

Name: Marianne T. Meil

Title: Vice President

Address: 127 Public Square
OH-01-27-0606
Cleveland, Ohio 44114

Attention: Marianne T. Meil

Phone: (216) 689-3549

Fax: (216) 689-4981

E-mail: Marianne_Meil@KeyBank.com

BNP PARIBAS, as a Lender

By: _____ /s/ Henry Setina

Name: Henry Setina

Title: Director

By: _____ /s/ Jeff Tebeaux

Name: Jeff Tebeaux

Title: Vice President

Address: 1200 Smith St.
Suite 3100
Houston, Texas 77002

Attention: Angela Arnold

Phone: (713) 982-1104

Fax: (713) 659-5234

E-mail: _____

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

By: _____ /s/ Richard C. Hardison

Name: Richard C. Hardison

Title: Vice President

Address: NC1-007-17-12
100 North Tryon St.
Charlotte, NC 28255

Attention: Richard C. Hardison

Phone: (704) 386-1185

Fax: (704) 388-8268

E-mail: richard.c.hardison@bankofamerica.com

**DRESDNER BANK AG, NEW YORK & GRAND
CAYMAN BRANCHES, as a Lender**

By: _____ /s/ J. Michael Leffler

Name: J. Michael Leffler
Title: Managing Director

By: _____ /s/ Stephen Kovach

Name: Stephen Kovach
Title: Vice President

Address: 1301 Avenue of the Americas
New York, NY 10019

Attention: J. Michael Leffler
Phone: (212) 895-1772
Fax: (212) 429-4382
E-mail: Michael.Leffler@drkw.com

REGIONS BANK, as a Lender

By: _____ /s/ W. Brad Davis

Name: W. Brad Davis

Title: Vice President

Address: One Glenlake Parkway
Suite 400
Atlanta, GA 30328

Attention: W. Brad Davis

Phone: (770) 481-4339

Fax: (770) 481-4395

E-mail: brad.davis@regions.com

THE BANK OF NEW YORK, as a Lender

By: _____ /s/ David C. Siegel

Name: David C. Siegel

Title: Vice President

Address: One Wall Street
New York, NY 10286

Attention: Larry Geter

Phone: (212) 635-6740

Fax: (212) 635-6399

E-mail: Lgeter@BankofNY.com

PRICING SCHEDULE

	<u>Level I Status</u>	<u>Level II Status</u>	<u>Level III Status</u>	<u>Level IV Status</u>	<u>Level V Status</u>
<i>Applicable Margin (Eurodollar Rate)</i>	0.500%	0.600%	0.700%	0.925%	1.125%
<i>Applicable Margin (Floating Rate)</i>	0.0%	0.0%	0.0%	0.0%	0.0%
<i>Applicable Facility Fee Rate</i>	0.125%	0.150%	0.175%	0.200%	0.250%
<i>Applicable Utilization Fee Rate</i>	0.125%	0.125%	0.125%	0.125%	0.125%

The Applicable Margin, Applicable Facility Fee Rate and Applicable Utilization Fee Rate shall be determined in accordance with the foregoing table based on the Company's Leverage Ratio as reflected in the then most recent Financials. Adjustments, if any, to the Applicable Margin or Applicable Facility Fee Rate shall be effective as of the fifth (5th) Business Day following the date the Administrative Agent has received the applicable Financials. If the Company fails to deliver the Financials to the Administrative Agent at the time required pursuant to Section 6.1(i) or 6.1(ii), as applicable, then the adjustment to the Applicable Margin and Applicable Facility Fee Rate shall be the highest adjustment to the Applicable Margin and Applicable Facility Fee Rate set forth in the foregoing table until the fifth (5th) Business Day following the date such Financials are so delivered.

Notwithstanding anything herein to the contrary, from the Closing Date to but not including the fifth (5th) Business Day following the date the Administrative Agent has received the Financials for the period ending February 29, 2004, the Applicable Margin and Applicable Facility Fee Rate shall be determined based upon the most recent Financials delivered pursuant to the Existing Credit Agreements.

For the purposes of this Schedule, the following terms have the following meanings, subject to the final paragraph of this Schedule:

"Financials" means the annual or quarterly financial statements of the Company delivered pursuant to Section 6.1(i) or 6.1(ii), respectively.

"Level I Status" exists at any date if, as of the last day of the fiscal quarter referred to in the most recent Financials, the Leverage Ratio is less than 2.00 to 1.00.

“Level II Status” exists at any date if, as of the last day of the fiscal quarter referred to in the most recent Financials, (i) the Company has not qualified for Level I Status and (ii) the Leverage Ratio is less than 2.50 to 1.00.

“Level III Status” exists at any date if, as of the last day of the fiscal quarter referred to in the most recent Financials, (i) the Company has not qualified for Level I Status or Level II Status and (ii) Leverage Ratio is less than 3.00 to 1.00.

“Level IV Status” exists at any date if, as of the last day of the fiscal quarter referred to in the most recent Financials, (i) the Company has not qualified for Level I Status, Level II Status or Level III Status and (ii) Leverage Ratio is less than 3.25 to 1.00.

“Level V Status” exists at any date if, on such date, the Company has not qualified for Level I Status, Level II Status, Level III Status or Level IV Status.

“Status” means Level I Status, Level II Status, Level III Status, Level IV Status or Level V Status.

COMMITMENT SCHEDULE

<u>LENDER</u>	<u>COMMITMENT</u>
Bank One, NA	\$ 32,500,000
Wachovia Bank, N.A.	\$ 27,500,000
LaSalle Bank National Association	\$ 25,000,000
Key Bank National Association	\$ 25,000,000
BNP Paribas	\$ 20,000,000
Bank of America, N.A.	\$ 20,000,000
Dresdner Bank AG, New York and Grand Cayman Branches	\$ 20,000,000
Regions Bank	\$ 15,000,000
The Bank of New York	\$ 15,000,000
AGGREGATE COMMITMENT	\$ 200,000,000.00

REIMBURSEMENT AGREEMENT

February 27, 2004

The General Electric Company ("GE") acknowledges that Acuity Lighting Group, Inc. d/b/a Acuity Brands Lighting ("ABL") has determined, utilizing its sole decision and discretion in this matter, that ABL will make a voluntary recall of certain lighting fixtures manufactured in Crawfordsville, Indiana because the lenses or reflectors or portions thereof may crack and fall as a result of leaked fluid (polypropylene glycol) from certain capacitors manufactured and sold by GE to ABL during the 2002-2003 time period. GE has been informed that ABL will incur costs to accomplish the recall, including among the costs the following: the cost to inspect installed fixtures, the cost of replacement fixtures, and labor costs to replace fixtures.

GE also acknowledges that it has been informed that, based on information currently available, ABL will repair or replace other lighting fixtures incorporating the leaking GE capacitors on an occurrence basis under ABL's warranty. GE has also been informed that ABL will incur costs to resolve warranty claims for these fixtures incorporating leaking capacitors, including among the costs the following: the cost to inspect installed fixtures and the cost to repair or replace fixtures (parts and labor).

GE and ABL agree as follows:

(1) GE will, promptly and on a monthly basis, reimburse ABL up to \$5.7 million for the costs of the recall and the costs of resolving warranty claims involving fixtures with leaking GE capacitors. ABL has informed GE that the actual costs of the recall and warranty claims resolution may be significantly lower or significantly higher than \$5.7 million.

(2) Nothing contained in this Reimbursement Agreement establishes or limits the rights or obligations of ABL or GE with respect to other liabilities, costs, or expenses, including actual recall and warranty costs greater than the amounts specified in the preceding paragraph. In such matters, the parties will in good faith agree upon the appropriate amount of payment by GE to ABL.

(3) GE and ABL will cooperate to -

(a) enable recall and warranty work to be conducted as efficiently and cost-effectively as is reasonably possible, taking into consideration the need to preserve customer relationships;

(b) identify as closely as is reasonably possible the true and complete population of fixtures containing the subject capacitors, with the goal of recalling only those fixtures containing the subject capacitors;

(c) establish a procedure, pursuant to paragraph (d) below, such that recall and warranty costs are traceable on a site-by-site basis and that costs for fixture replacements for problems caused by something other than GE's actions or omissions can be excluded from the recall and warranty costs that are the subject of this Reimbursement Agreement; and

(d) follow a collaborative process which provides for joint planning, implementation, execution and approval of process elements of the recall (to the extent permitted under the corrective action plan approved by the Consumer Product Safety Commission) and warranty work by GE and ABL project teams, with disputed matters to be resolved by the General Manager, GE Motors & Controls, and the Executive Vice President & General Manager, Lithonia Lighting Group of ABL, with remaining disputed matters to be resolved by the CEO of GE Consumer & Industrial and the CEO of Acuity Brands, Inc.

GE and ABL will negotiate in good faith in order to be able to enter into a mutually acceptable agreement by the close of business on Monday, March 1, 2004, outlining the dates by which specific data will be gathered or reviewed, tests performed, and records reviewed, in order to best determine the ABL fixtures containing leaking GE capacitors and to identify appropriate means of reducing the costs of the recall and warranty work.

(4) Nothing in this Reimbursement Agreement shall constitute an admission by GE, with respect to matters outside the scope of paragraph (1) above, that its manufacturing process is the sole reason for leaking capacitors or that GE's terms and conditions did not apply to this transaction.

(5) The parties hereto agree to negotiate in good faith with the goal of entering into a mutually acceptable Joint Defense Agreement with respect to the leaking capacitors and resulting problems with ABL lighting fixtures by the close of business on Monday, March 1, 2004.

(6) Disputes between GE and ABL regarding rights and obligations under this Reimbursement Agreement shall be resolved through binding arbitration pursuant to a mutually acceptable arbitration agreement to be negotiated in good faith by the parties prior to the close of business on Monday, March 1, 2004.

/s/ Mark J. Gliebe

Mark J. Gliebe
General Manager
General Electric Company
GE Consumer & Industrial

/s/ John K. Morgan

John K. Morgan
Sr. Executive Vice President
Acuity Lighting Group, Inc.

I, James S. Balloun, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Acuity Brands, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's second fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 6, 2004

/s/ James S. Balloun

James S. Balloun
Chairman and Chief Executive Officer

[A signed original of this written statement required by Section 302 of the Sarbanes-Oxley Act has been provided to Acuity Brands, Inc. and will be retained by Acuity Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

I, Vernon J. Nagel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Acuity Brands, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures [as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)] for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - (b) Evaluated the effectiveness of the registrant's disclosure controls and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
 - (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's second fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 6, 2004

/s/ Vernon J. Nagel

Vernon J. Nagel
Vice Chairman and Chief Financial Officer

[A signed original of this written statement required by Section 302 of the Sarbanes-Oxley Act has been provided to Acuity Brands, Inc. and will be retained by Acuity Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and in connection with the Quarterly Report on Form 10-Q of Acuity Brands, Inc. (the "Corporation") for the quarter ended February 29, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Chairman and Chief Executive Officer of the Corporation, certifies that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

/s/ James S. Balloun

James S. Balloun
Chairman and Chief Executive Officer
April 6, 2004

[A signed original of this written statement required by Section 906 has been provided to Acuity Brands, Inc. and will be retained by Acuity Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and in connection with the Quarterly Report on Form 10-Q of Acuity Brands, Inc. (the "Corporation") for the quarter ended February 29, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Vice Chairman and Chief Financial Officer of the Corporation, certifies that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

/s/ Vernon J. Nagel

Vernon J. Nagel
Vice Chairman and Chief Financial Officer
April 6, 2004

[A signed original of this written statement required by Section 906 has been provided to Acuity Brands, Inc. and will be retained by Acuity Brands, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]