



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 **April 30, 2003**

OR

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

For the transition period from        to

Commission file Number **1-8929**

**ABM INDUSTRIES INCORPORATED**

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(Exact name of registrant as specified in its charter)

**Delaware**

**94-1369354**

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(State or other jurisdiction of  
incorporation or organization)

(IRS Employer  
Identification No.)

**160 Pacific Avenue, Suite 222, San Francisco, California**

**94111**

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(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **415/733-4000**

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 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

Number of shares of common stock outstanding as of May 31, 2003: 49,218,144.

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**ABM Industries Incorporated**  
**Form 10-Q**  
**For the three months and six months ended April 30, 2003**

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements (Unaudited)

## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS

(In thousands except share amounts)

	April 30, 2003	October 31, 2002
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 10,515	\$ 19,427
Trade accounts receivable, net	326,167	318,376
Inventories	29,437	30,055
Deferred income taxes	30,467	30,002
Prepaid expenses and other current assets	44,434	39,925
	<u>441,020</u>	<u>437,785</u>
<b>Investments and long-term receivables</b>	13,809	14,952
<b>Property, plant and equipment, at cost</b>		
Land and buildings	5,055	5,114
Transportation equipment	15,099	14,245
Machinery and other equipment	74,325	73,001
Leasehold improvements	13,911	14,428
	<u>108,390</u>	<u>106,788</u>
Less accumulated depreciation and amortization	(73,046)	(70,522)
	<u>35,344</u>	<u>36,266</u>
<b>Goodwill</b>	185,540	167,916
<b>Deferred income taxes</b>	35,432	33,542
<b>Other assets</b>	18,745	14,478
	<u>\$729,890</u>	<u>\$704,939</u>

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## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONSOLIDATED BALANCE SHEETS**

(In thousands except share amounts)

	April 30, 2003	October 31, 2002
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities</b>		
Trade accounts payable	\$ 42,567	\$ 51,585
Income taxes payable	7,847	6,579
Accrued liabilities:		
Compensation	69,070	62,412
Taxes - other than income	16,501	13,923
Insurance claims	52,949	50,969
Other	57,862	41,622
	<u>246,796</u>	<u>227,090</u>
Total current liabilities	246,796	227,090
<b>Retirement plans</b>	24,003	23,791
<b>Insurance claims</b>	68,623	67,388
	<u>339,422</u>	<u>318,269</u>
Total liabilities	339,422	318,269
<b>Stockholders' equity</b>		
Preferred stock, \$0.01 par value; 500,000 shares authorized; none issued	—	—
Common stock, \$0.01 par value, 100,000,000 shares authorized; 51,145,000 and 50,397,000 shares issued at April 30, 2003 and October 31, 2002, respectively	512	504
Additional paid-in capital	159,233	151,135
Accumulated other comprehensive loss	(720)	(789)
Retained earnings	264,372	259,452
Cost of treasury stock (2,000,000 and 1,400,000 shares at April 30, 2003 and October 31, 2002, respectively)	(32,929)	(23,632)
	<u>390,468</u>	<u>386,670</u>
Total stockholders' equity	390,468	386,670
Total liabilities and stockholders' equity	<u>\$729,890</u>	<u>\$704,939</u>

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

## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF INCOME**

(In thousands except per share amounts)

	Three Months Ended April 30,		Six Months Ended April 30,	
	2003	2002	2003	2002
<b>Revenues</b>				
Sales and other income	\$589,829	\$525,850	\$1,170,455	\$1,053,402
Gain on insurance claim	—	4,300	—	4,300
Total revenues	589,829	530,150	1,170,455	1,057,702
<b>Expenses</b>				
Operating expenses and cost of goods sold	526,613	468,563	1,052,996	943,346
Selling, general and administrative	47,460	38,791	95,066	78,407
Interest	178	232	303	497
Total expenses	574,251	507,586	1,148,365	1,022,250
Income before income taxes	15,578	22,564	22,090	35,452
Income taxes	5,686	8,575	7,860	13,472
<b>Net income</b>	<b>\$ 9,892</b>	<b>\$ 13,989</b>	<b>\$ 14,230</b>	<b>\$ 21,980</b>
<b>Net income per common share</b>				
Basic	\$ 0.20	\$ 0.28	\$ 0.29	\$ 0.45
Diluted	\$ 0.20	\$ 0.27	\$ 0.29	\$ 0.43
<b>Average common and common equivalent shares</b>				
Basic	48,994	49,256	49,023	49,110
Diluted	49,877	51,494	49,925	51,086
<b>Dividends per common share</b>	<b>\$ 0.095</b>	<b>\$ 0.090</b>	<b>\$ 0.190</b>	<b>\$ 0.180</b>

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

## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE SIX MONTHS ENDED APRIL 30, 2003 AND 2002**

(In thousands)

	2003	2002
<b>Cash flows from operating activities:</b>		
Cash received from customers	\$ 1,157,025	\$ 1,071,987
Other operating cash receipts	1,702	7,353
Interest received	521	303
Cash paid to suppliers and employees	(1,127,297)	(1,025,220)
Interest paid	(193)	(614)
Income taxes paid	(8,515)	(13,498)
	<hr/>	<hr/>
Net cash provided by operating activities	23,243	40,311
	<hr/>	<hr/>
<b>Cash flows from investing activities:</b>		
Additions to property, plant and equipment	(5,572)	(3,880)
Proceeds from sale of assets	400	603
Decrease in investments and long-term receivables	1,143	156
Purchase of businesses	(17,193)	(11,577)
	<hr/>	<hr/>
Net cash used in investing activities	(21,222)	(14,698)
	<hr/>	<hr/>
<b>Cash flows from financing activities:</b>		
Common stock issued	7,674	9,740
Common stock purchases	(9,297)	(16,670)
Dividends paid	(9,310)	(8,878)
Increase in bank overdraft	—	1,687
Repayments of long-term borrowings	—	(11,819)
	<hr/>	<hr/>
Net cash used in financing activities	(10,933)	(25,940)
	<hr/>	<hr/>
Net decrease in cash and cash equivalents	(8,912)	(327)
Cash and cash equivalents beginning of period	19,427	3,052
	<hr/>	<hr/>
<b>Cash and cash equivalents end of period</b>	<b>\$ 10,515</b>	<b>\$ 2,725</b>
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## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE SIX MONTHS ENDED APRIL 30, 2003 AND 2002**

(In thousands)

	2003	2002
<b>Reconciliation of net income to net cash provided by operating activities:</b>		
Net income	\$ 14,230	\$ 21,980
Adjustments:		
Depreciation and intangible amortization	7,440	7,642
Provision for bad debts	3,369	2,123
Gain on sale of assets	(81)	(157)
(Increase) decrease in deferred income taxes	(2,355)	531
(Increase) decrease in trade accounts receivable	(11,126)	22,098
Decrease (increase) in inventories	633	(3,528)
(Increase) decrease in prepaid expenses and other current assets	(3,744)	1,900
(Increase) decrease in other assets	(4,626)	126
Increase in income taxes payable	1,700	(557)
Increase in retirement plan accrual	212	413
Increase in insurance claims liability	3,215	2,199
Increase (decrease) in trade accounts payable and other accrued liabilities	14,376	(14,459)
Total adjustments to net income	9,013	18,331
<b>Net cash provided by operating activities</b>	<b>\$ 23,243</b>	<b>\$ 40,311</b>
<b>Supplemental data:</b>		
Non-cash investing activities:		
Common stock issued for net assets of business acquired	\$ —	\$ 1,371

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

## ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. General**

In the opinion of management, the accompanying unaudited consolidated financial statements contain all material adjustments which are necessary to present fairly ABM Industries Incorporated and subsidiaries (the Company) financial position as of April 30, 2003, the results of operations for the three and six months then ended, and cash flows for the six months then ended. These adjustments are of a normal, recurring nature.

These consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company's Form 10-K for the fiscal year ended October 31, 2002, as filed with the Securities and Exchange Commission.

**2. Net Income per Common Share**

The Company has reported its earnings in accordance with SFAS No. 128, "Earnings per Share." Basic net income per common share is based on the weighted average number of shares outstanding during the period. Diluted net income per common share is based on the weighted average number of shares outstanding during the period, including common stock equivalents. The calculation of net income per common share is as follows:

(In thousands except per share amounts)	Three months ended April 30,		Six months ended April 30,	
	2003	2002	2003	2002
Net income available to common stockholders	\$ 9,892	\$13,989	\$14,230	\$21,980
Average common shares outstanding - - basic	48,994	49,256	49,023	49,110
Effect of dilutive securities:				
Stock options	883	2,238	902	1,976
Average common shares outstanding - - diluted	49,877	51,494	49,925	51,086
Net income per common share - basic	\$ 0.20	\$ 0.28	\$ 0.29	\$ 0.45
Net income per common share - diluted	\$ 0.20	\$ 0.27	\$ 0.29	\$ 0.43

For purposes of computing diluted net income per common share, weighted average common share equivalents do not include stock

options with an exercise price that exceeds the average fair market value of the Company's common stock for the period (i.e., "out-of-the-money" options). On April 30, 2003 and 2002, options to purchase common shares of 4.3 million and 0.4 million at a weighted average exercise price of \$15.85 and \$18.36, respectively, were excluded from the computation.

### **3. Stock-Based Compensation – Adoption of Statement of Financial Accounting Standard No. 148**

In December 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure." SFAS No. 148 amends SFAS No. 123, "Accounting for Stock-Based Compensation" to provide for alternative methods of transition to SFAS No. 123 and amends disclosure provisions. The Statement is effective for financial statements for fiscal years ending after December 15, 2002. The Company continues to account for stock-based employee compensation plans using the intrinsic value method under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees", and has adopted the disclosure provisions of SFAS 148 effective November 1, 2002. The Company's application of APB Opinion No. 25 generally does not result in compensation cost because the exercise price of the options is equal to the fair value of the stock at the grant date. Under the intrinsic value method, if the fair value of the stock is greater than the exercise price at grant date, the excess is amortized to compensation expense over the estimated service life of the recipient. No stock-based employee compensation cost is reflected in net income for the three and six months ended April 30, 2003 and 2002 as all options granted since October 31, 1995 had an exercise price equal to the market value of the underlying common stock on the date of grant. The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123 to all employee options granted, modified, or settled after October 31, 1995 using the retroactive restatement method:

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	(In thousands except per share amounts)	Three months ended		Six months ended	
		2003	April 30, 2002	2003	April 30, 2002
Net income, as reported		\$9,892	\$13,989	\$14,230	\$21,980
Add:	Stock-based employee compensation cost, net of tax effect, included in net income	—	—	—	—
Deduct:	Stock-based employee compensation cost, net of tax effect, that would have been included in net income if the fair value method had been applied	1,054	1,052	2,133	2,074
Net income, pro forma		\$8,838	\$12,937	\$12,097	\$19,906
Net income per common share - basic,					
as reported		\$ 0.20	\$ 0.28	\$ 0.29	\$ 0.45
pro forma		\$ 0.18	\$ 0.26	\$ 0.25	\$ 0.41
Net income per common share - diluted,					
as reported		\$ 0.20	\$ 0.27	\$ 0.29	\$ 0.43
pro forma		\$ 0.18	\$ 0.25	\$ 0.24	\$ 0.39

#### 4. Revenue Presentation - Adoption of Emerging Issues Task Force Issue No. 01-14

In January 2002, the Emerging Issues Task Force (EITF) released Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for Out-of-Pocket Expenses Incurred," which the Company adopted in fiscal 2002. For the Company's Parking segment this pronouncement requires both revenues and expenses be recognized, in equal amounts, for costs directly reimbursed from its managed parking lot clients. Previously, expenses directly reimbursed under managed parking lot agreements were netted against the reimbursement received. EITF No. 01-14 did not change the income statement presentation of revenues and expenses of any other segments. Amounts have been reclassified to conform to the presentation of these reimbursed expenses in all prior periods presented. Adoption of the pronouncement resulted in an increase in total revenues and total costs and expenses in equal amounts of \$51.5 million and \$49.0 million for the three months ended April 30, 2003 and 2002, respectively, and \$105.2 million and \$100.6 million for the six months ended April 30, 2003 and 2002, respectively. This presentation change had no impact on operating profits or net income.

## 5. Goodwill and Other Intangibles

The changes in the carrying amount of goodwill for the six months ended April 30, 2003 are as follows (acquisitions are discussed in Note 6):

(In thousands)

Segment	Balance as of October 31, 2002	Acquisitions	Earnouts	Balance as of April 30, 2003
Janitorial	\$108,698	\$12,965	\$2,539	\$124,202
Parking	27,271	1,627	431	29,329
Engineering	2,174	—	—	2,174
Security	7,213	—	45	7,258
Lighting	16,701	—	17	16,718
Elevator	3,907	—	—	3,907
Other	1,952	—	—	1,952
	<u>\$167,916</u>	<u>\$14,592</u>	<u>\$3,032</u>	<u>\$185,540</u>

As of April 30, 2003 and October 31, 2002, all intangible assets other than goodwill, consisting principally of contract rights with a net book value of \$4.2 million and \$4.1 million, respectively, were included in other assets and are being amortized over the contract periods. Amortization expense for intangible assets other than goodwill was \$0.3 million for each of the three month periods ended April 30, 2003 and 2002, and \$0.6 million and \$0.5 million for the six months ended April 30, 2003 and 2002, respectively. The remaining amortization period for intangible assets other than goodwill ranges from 1 to 14 years. The weighted average remaining life is 5 years at April 30, 2003.

## 6. Acquisitions

All acquisitions have been accounted for using the purchase method of accounting. Operations of the companies and businesses acquired have been included in the accompanying consolidated financial statements from their respective dates of acquisition. The excess of the purchase price over fair value of the net assets acquired is generally included in goodwill. Most purchase agreements provide for contingent payments based on the annual pretax income for subsequent periods ranging generally from two to five years. Any such future payments are generally capitalized as goodwill when paid. Cash paid for acquisitions, including down payments and contingent amounts based on subsequent earnings, was \$17.2 million and \$11.6 million in the six months ended April 30,

2003 and 2002, respectively. In addition, shares of common stock with a fair market value of \$1.4 million at the date of issuance were issued in the first six months of 2002, which was the final payment under the contingent payment provisions of a 1997 acquisition.

On January 31, 2003, the Company acquired the commercial self-performed janitorial cleaning operations of Horizon National Commercial Services, LLC, a provider of janitorial services based in Red Bank, New Jersey. Assets acquired by the Company include key customer accounts in the eastern, mid-western and south central United States. The total adjusted acquisition cost was \$14.7 million, which included the assumption of payroll related liabilities totaling \$0.2 million. Of the total adjusted acquisition cost, \$13.0 million was allocated to goodwill and \$1.7 million to fixed and other assets at the time of acquisition.

On April 30, 2003, the Company acquired selected assets of Valet Parking Service, a provider of parking services based in Culver City, California. The total acquisition cost included a cash down payment of \$1.6 million, most of which was allocated to goodwill, plus annual contingent payments of \$0.3 million for the three years subsequent to the acquisition date, if specified levels of variable gross profits from the acquired operations are maintained.

The operating results generated from these acquisitions will be included in the consolidated financial results of the Company from the respective dates of acquisition. Due to the relative size of these acquisitions, pro forma information is not included in the consolidated financial statements.

During the six months ended April 30, 2003, contingent payments totaling \$3.0 million were made on earlier acquisitions as provided by the respective purchase agreements. All amounts paid were added to goodwill.

## **7. Debt**

In April 2003, the Company increased the amount of its syndicated line of credit, which will expire July 1, 2005, to \$250 million. As amended, no compensating balances are required under the facility and the interest rate is determined at the time of borrowing based on the London interbank offered rate (LIBOR) plus a spread of .875% to 1.50% or, for overnight borrowings, at the prime rate plus a spread of .00% to .25% or, for overnight to one week, at the interbank offered rate (IBOR) plus a spread of .875% to 1.50%. The spread for LIBOR, PRIME and IBOR borrowings is based on the Company's leverage ratio. The facility calls for a commitment fee payable quarterly, in arrears, of .200%, as amended, based on

the average, daily, unused portion. For purposes of this calculation, irrevocable standby letters of credit issued primarily in conjunction with the Company's self-insurance program plus cash borrowings are considered to be outstanding amounts. As of April 30, 2003, the total outstanding amount under this facility was \$120.5 million in the form of standby letters of credit. The provisions of the credit facility require the Company to maintain certain financial ratios and limit outside borrowings. The Company was in compliance with all covenants as of April 30, 2003.

#### **8. Comprehensive Income (Loss)**

Comprehensive income consists of net income and other related gains and losses affecting stockholders' equity that, under generally accepted accounting principles, are excluded from net income. For the Company, such other comprehensive income items consist of unrealized foreign currency translation gains and losses. Comprehensive income for the three and six months ended April 30, 2003 and 2002 approximated net income.

#### **9. Treasury Stock**

On September 16, 2001, the Company's Board of Directors authorized the purchase of up to 2.0 million shares of the Company's outstanding stock at any time through December 31, 2001. On December 17, 2001, the Board of Directors extended this authorization through December 31, 2002 and on December 10, 2002, this authorization was extended through January 31, 2003. As of October 31, 2002, the Company had purchased 1.4 million shares at a cost of \$23.6 million (an average price per share of \$16.88). In the three months ended January 31, 2003, the Company purchased the remaining 0.6 million shares at a cost of \$9.3 million (an average price per share of \$15.50).

On March 11, 2003, the Company's Board of Directors authorized the purchase of up to 2.0 million shares of the Company's outstanding stock at any time through December 31, 2003. The Company did not purchase any shares in the three months ended April 30, 2003.

#### **10. Segment Information**

Under SFAS No. 131 criteria, Janitorial, Parking, Engineering, Security, Lighting, and Elevator are reportable segments. All other services are included in the "Other" segment. Corporate expenses are not allocated.

(In thousands)	Three months ended April 30,		Six months ended April 30,	
	2003	2002	2003	2002
<b>Sales and Other Income:</b>				
Janitorial	\$343,505	\$284,229	\$ 674,357	\$ 571,029
Parking	91,659	88,353	186,074	177,839
Engineering	43,945	42,667	89,572	86,337
Security	39,008	34,631	76,797	66,794
Lighting	33,577	32,071	66,723	64,638
Elevator	27,292	28,234	55,474	54,727
Other	10,741	15,532	21,225	31,688
Corporate	102	133	233	350
	<u>\$589,829</u>	<u>\$525,850</u>	<u>\$1,170,455</u>	<u>\$1,053,402</u>
<b>Operating Profit:</b>				
Janitorial	\$ 15,570	\$ 16,327	\$ 23,377	\$ 27,170
Parking	1,022	1,783	1,612	2,831
Engineering	2,586	2,339	4,616	4,660
Security	1,160	1,065	2,502	2,260
Lighting	1,813	2,095	2,493	4,004
Elevator	1,043	608	1,994	1,524
Other	70	74	(53)	772
Corporate expense	(7,508)	(5,795)	(14,148)	(11,572)
	<u>15,756</u>	<u>18,496</u>	<u>22,393</u>	<u>31,649</u>
Gain on insurance claim	—	4,300	—	4,300
Interest expense	(178)	(232)	(303)	(497)
	<u>\$ 15,578</u>	<u>\$ 22,564</u>	<u>\$ 22,090</u>	<u>\$ 35,452</u>

## 11. Contingencies

In September 1999, a former employee filed a gender discrimination lawsuit against the Company. On May 19, 2003, a Washington state court jury awarded \$4 million in damages, plus plaintiff's costs, to the former employee. The Company will ask the Superior Court, State of Washington, County of Spokane, to set aside the jury verdict and will appeal if the court denies that request. Although there can be no assurance that the Company will prevail in this matter, the Company believes that the verdict against the Company was inconsistent with the law and facts of the case and that it will be reversed upon appeal. Accordingly, the Company has not recorded any liability in its financial statements associated with the jury award.



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

### Financial Condition

Funds provided from operations and bank borrowings have historically been the sources for meeting working capital requirements, financing capital expenditures and acquisitions, and paying cash dividends. Management believes that funds from these sources will remain available and adequately serve the Company's liquidity needs. In April 2003, the Company increased the amount of its syndicated line of credit, which will expire July 1, 2005, to \$250 million. As amended, no compensating balances are required under the facility and the interest rate is determined at the time of borrowing based on the London interbank offered rate (LIBOR) plus a spread of .875% to 1.50% or, for overnight borrowings, at the prime rate plus a spread of .00% to .25% or, for overnight to one week, at the interbank offered rate (IBOR) plus a spread of .875% to 1.50%. The spread for LIBOR, PRIME and IBOR borrowings is based on the Company's leverage ratio. The facility calls for a commitment fee payable quarterly, in arrears, of .200%, as amended, based on the average, daily, unused portion. For purposes of this calculation, irrevocable standby letters of credit issued primarily in conjunction with the Company's self-insurance program plus cash borrowings are considered to be outstanding amounts. As of April 30, 2003, the total outstanding amount under this facility was \$120.5 million in the form of standby letters of credit. The provisions of the credit facility require the Company to maintain certain financial ratios and limit outside borrowings. The Company was in compliance with all covenants as of April 30, 2003.

During the six months ended April 30, 2003 and 2002, operating activities generated net cash of \$23.2 million and \$40.3 million, respectively. Cash from operations for the six months ended April 30, 2002 included the receipt of the initial payment of \$6.5 million from the September 11th insurance claim. Cash from operations decreased primarily due to greater collection of outstanding accounts receivable balances during the first half of 2002 compared to the first half of 2003, higher insurance premium payments, and effect of the timing of other recurring expense payments.

Net cash used in investing activities was \$21.2 million in the six months ended April 30, 2003, compared to \$14.7 million in the same period of 2002. The increase is primarily due to the acquisition of the commercial self-performed janitorial cleaning operations from Horizon National Commercial Services in January 2003.

Net cash used in financing activities was \$10.9 million in the six months ended April 30, 2003, compared to \$25.9 million in the six months ended April 30, 2002. The change is principally due to the net effect of no long-term borrowings and repayments in the first six months of 2003, compared to \$11.8 million of repayments of long-term borrowings in the first six months of 2002, and the use of \$9.3 million to purchase the Company's stock in the first half of 2003, compared to \$16.7 million in the first half of the prior year.

On September 16, 2001, the Company's Board of Directors authorized the purchase of up to 2.0 million shares of the Company's outstanding stock at any time through December 31, 2001. On December 17, 2001, the Board of Directors extended this authorization through December 31, 2002 and on December 10, 2002, this authorization was extended through January 31, 2003. As of October 31, 2002, the Company had purchased 1.4 million shares at a cost of \$23.6 million (an average price per share of \$16.88). In the three months ended January 31, 2003, the Company purchased the remaining 0.6 million shares at a cost of \$9.3 million (an average price per share of \$15.50).

On March 11, 2003, the Company's Board of Directors authorized the purchase of up to 2.0 million shares of the Company's outstanding stock at any time through December 31, 2003. The Company did not purchase any shares in the three months ended April 30, 2003.

At April 30, 2003, working capital was \$194.2 million, compared to \$210.7 million at October 31, 2002. The \$16.5 million decline is primarily due to higher accrued liabilities as of April 30, 2003 compared to October 31, 2002 mainly due to the timing of recurring expense payments. The largest component of working capital consists of trade accounts receivable that totaled \$326.2 million at April 30, 2003, compared to \$318.4 million at October 31, 2002. These amounts were net of allowances for doubtful accounts of \$6.4 million and \$6.6 million at April 30, 2003 and October 31, 2002, respectively. As of April 30, 2003, accounts receivable that were over 90 days past due had decreased \$6.7 million to \$34.9 million (10.7% of the total net outstanding) from \$41.6 million (13.1% of the total net outstanding) at October 31, 2002, primarily due to continued increased collection efforts.

The Company self-insures certain insurable risks such as general liability, automobile property damage, and workers' compensation. Commercial umbrella policies are obtained to provide for \$150 million of coverage above the self-insured retention limits (i.e., deductible). As of November 1, 2002, substantially all of the self-insured retentions increased from \$0.5 million to

\$1.0 million. Effective April 14, 2003, the deductible for California workers' compensation insurance increased to \$2.0 million per occurrence due to general insurance market conditions. This recent increase in retention will be taken into consideration during this year's actuarial review of the reserves. While the increased self-insured retention increases the Company's risk associated with workers' compensation liabilities, during the entire history of the Company's self-insurance program, few claims have exceeded \$1.0 million. Despite the increased retention, the price of the 2003 umbrella policies is significantly higher than 2002 and this higher price has been factored into the self-insurance rates charged by the Company to its divisions in 2003. The Company annually retains an outside actuary to review the adequacy of its self-insurance claim reserves.

#### **Insurance Claims Related to the Destruction of the World Trade Center in New York City on September 11, 2001**

The Company had commercial insurance policies covering business interruption, property damage and other losses related to this tragic incident. As previously reported by the Company, the World Trade Center complex in New York was the Company's largest single job-site with annual sales of approximately \$75 million (3% of ABM's consolidated sales for 2001). The Company provided its insurance carrier, Zurich Insurance, claim information regarding the lost business income and, as described further below, substantially settled the property portion of the claim. In December 2001, Zurich filed a Declaratory Judgment Action in the Southern District of New York claiming the loss of the business profit falls under the policy's contingent business interruption sub-limit of \$10 million. On June 2, 2003, the court ruled in favor of Zurich. Based on a review of the policy and consultation with legal counsel and other specialists, the Company continues to believe that its business interruption claim does not fall under the \$10 million sub-limit on contingent business interruption and, therefore, the Company will appeal the judge's decision. Zurich's filing does not impact any other aspects of the claim. As of October 31, 2002, Zurich paid two partial settlements totaling \$13.3 million, of which \$10 million is for business interruption and \$3.3 million for property damage. The Company realized a pretax gain of \$10 million in 2002 on the proceeds received.

#### **Contractual Obligations and Commercial Commitments**

The Company is contractually obligated to make future payments under non-cancelable operating lease agreements. As of April 30, 2003, future contractual payments are as follows:

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(In thousands)

Contractual Obligations	Payments Due By Period				
	Total	Less than 1 year	1 - 2 years	4 - 5 years	After 5 years
Operating Leases	\$194,915	\$46,942	\$59,708	\$33,187	\$55,078

Additionally, the Company has the following commercial commitments:

(In thousands)

Commercial Commitments	Amounts of Commitment Expiration Per Period				
	Total	Less than 1 year	1 - 2 years	4 - 5 years	After 5 years
Standby Letters of Credit	\$120,507	\$120,507	—	—	—
Financial Responsibility Bonds	4,160	4,160	—	—	—
Total	\$124,667	\$124,667	—	—	—

**Acquisitions**

The operating results of businesses acquired have been included in the accompanying consolidated financial statements from their respective dates of acquisition. Acquisitions made during the first six months of 2003 are discussed in Note 6 to the consolidated financial statements.

**Results of Operations**

The following discussion should be read in conjunction with the consolidated financial statements of the Company. All information in the discussion and references to the years and quarters are based on the Company's fiscal year and second quarter which ended on October 31 and April 30, respectively.

**Three Months Ended April 30, 2003 vs. Three Months Ended April 30, 2002**

Net income for the second quarter of 2003 was \$9.9 million (\$0.20 per diluted share), a decrease of \$4.1 million or 29.3% from the net income of \$14.0 million (\$0.27 per diluted share) for the second quarter of 2002. Pretax income for the second quarter of 2002 included a gain of \$4.3 million from an initial payment of \$6.5 million from the September 11 insurance claim. Declines in operating profits from the Janitorial segment, primarily the

Northeast and Northwest regions, Lighting and Parking segments as well as higher Corporate expenses accounted for the decrease in net income. Partially offsetting the declines were operating profits totaling \$2.7 million from acquisitions that did not impact results until after April 30, 2002, namely: Lakeside Building Maintenance (Lakeside) and the commercial self-performed janitorial cleaning operations from Horizon National Commercial Services (Horizon).

Sales and other income (hereinafter called sales) for the second quarter of 2003 of \$589.8 million increased by \$63.9 million or 12.2% from \$525.9 million for the second quarter of 2002. The increase is primarily due to \$57.4 million in sales from acquisitions that did not impact results until after April 30, 2002. The remainder of the increase was attributable to new business, partially offset by the impact of contract terminations and declines in sales due to increased real estate vacancies and decreased capital project work and extra services as customers tightened their budgets.

As a percentage of sales, operating expenses and cost of goods sold were 89.3% for the second quarter of 2003, compared to 89.1% for the second quarter of 2002. Consequently, as a percentage of sales, the Company's gross profit (sales minus operating expenses and cost of goods sold) of 10.7% in the second quarter of 2003 was lower than the gross profit of 10.9% for the second quarter of 2002. The decline was due primarily to lower margins on new business, declines in sales from higher margin business due to increased vacancies, and higher reimbursements for out-of-pocket expenses from existing managed parking lot clients for which Parking had no margin benefit. Additionally, operating expenses for the second quarter of 2003 included higher insurance costs that could not be fully absorbed through increased pricing.

Selling, general and administrative expenses for the second quarter of 2003 were \$47.5 million compared to \$38.8 million for the corresponding three months of 2002. The increase in selling, general and administrative expenses was due primarily to \$4.3 million of selling, general and administrative expenses related to the Lakeside and Horizon acquisitions that did not impact results until after the second quarter of 2002. Additionally, corporate expenses for the first quarter of 2003 included higher directors and officers' insurance costs and professional fees. As a percentage of sales, selling, general and administrative expenses increased to 8.0% for the three months ended April 30, 2003 from 7.4% for the same period in 2002.

Interest expense, which includes loan amortization and commitment fees for the revolving credit facility, was \$0.18 million for the second quarter of 2003 compared to \$0.23 million for the same period in 2002. The decrease was primarily due to

lower borrowings and interest rates during the second quarter of 2003, compared to the same period in 2002.

The effective federal and state income tax rate was 36.5% for the second quarter of 2003, compared to 38.0% for the second quarter of 2002. The lower effective tax rate was primarily due to the impact of a lower estimated state tax rate and a higher proportional benefit from the same level of estimated federal tax credits applied to a lower level of pretax income.

**Segment Information**

Under SFAS No. 131 criteria, Janitorial, Parking, Engineering, Security, Lighting, and Elevator are reportable segments. All other services are included in the "Other" segment. Corporate expenses are not allocated.

(In thousands)	Three months ended April 30,	
	2003	2002
<b>Sales and Other Income:</b>		
Janitorial	\$343,505	\$284,229
Parking	91,659	88,353
Engineering	43,945	42,667
Security	39,008	34,631
Lighting	33,577	32,071
Elevator	27,292	28,234
Other	10,741	15,532
Corporate	102	133
	<u>\$589,829</u>	<u>\$525,850</u>
<b>Operating Profit:</b>		
Janitorial	\$ 15,570	\$ 16,327
Parking	1,022	1,783
Engineering	2,586	2,339
Security	1,160	1,065
Lighting	1,813	2,095
Elevator	1,043	608
Other	70	74
Corporate expense	(7,508)	(5,795)
	<u>15,756</u>	<u>18,496</u>
Operating Profit	15,756	18,496
Gain on insurance claim	—	4,300
Interest expense	(178)	(232)
	<u>\$ 15,578</u>	<u>\$ 22,564</u>
Income before income taxes	\$ 15,578	\$ 22,564

The results of operations from the Company's segments for the three months ended April 30, 2003, compared to the same period in 2002, are more fully described below.

Sales for Janitorial were \$59.3 million or 20.9% higher in the second quarter of 2003 than the same quarter of 2002, primarily due to the \$57.4 million contribution from Lakeside acquired on July 12, 2002 and Horizon acquired on January 31, 2003. The remainder of the increase was attributable to new business, partially offset by the termination of unprofitable jobs in the Northeast and Southeast regions, the termination of a major contract due to collection issues in the Northwest region, declines in sales from existing contracts due to increased vacancies and decreased tag work or extra services as customers tightened their budgets. Operating profits in the second quarter of 2003 were \$0.8 million

or 4.6% lower than the same period in 2002 primarily due to the \$3.5 million decline in operating profits in almost all regions, particularly in the Northeast and Northwest regions, partially offset by \$2.7 million of operating profit from Lakeside and Horizon. Competitive pressures, particularly from non-union companies, led to the pricing of new business at lower margins and prevented most regions of Janitorial from passing on the full amount of the insurance rate increase for 2003.

The decline in operating profits in the Northwest region of Janitorial was due to the loss of a major contract and higher legal fees primarily due to a gender discrimination lawsuit filed against the Company by a former employee. On May 19, 2003, a Washington state court jury awarded \$4 million in damages, plus plaintiff's costs, to the former employee which the Company will appeal. The Company believes that the verdict was inconsistent with the law and facts of the case and that it will be reversed upon appeal. Accordingly, the Company has not recorded any liability in its financial statements associated with the jury award.

The decline in operating profits in the Northeast region of Janitorial was primarily due to new business competitively priced at lower margins and a decline in sales from higher margin business due to increased vacancies.

Parking sales increased by \$3.3 million or 3.7%, while its operating profits decreased by \$0.8 million or 42.7% during the second quarter of 2003 compared to the second quarter of 2002. The decrease in operating profits was primarily due to the adverse effect of the war against Iraq and fear of Severe Acute Respiratory Syndrome (SARS) on sales at airport and hotel facilities, increased insurance costs which could not be fully absorbed through increased pricing, and start-up costs incurred at the San Jose Airport. Of the \$3.3 million sales increase, \$2.5 million represented higher reimbursements for out-of-pocket expenses from existing managed parking lot clients for which Parking had no margin benefit. The remainder of the sales increase was generated by net new business, partially offset by the decline in sales from the hi-tech areas of San Francisco and Seattle where the economic downturn resulted in high office building vacancies, the loss of a major contract in Seattle, and the decline in sales at airport and hotel facilities.

Sales for Engineering increased \$1.3 million or 3.0% from the second quarter of 2002 to the second quarter of 2003 due to new business. Operating profits increased by \$0.2 million or 10.6% from the second quarter of 2002 to the second quarter of 2003 primarily due to increased business and the savings from the delay in replacing a vacant sales position.



Security sales increased \$4.4 million or 12.6% in the second quarter of 2003 compared the second quarter of 2002, primarily due to an increase of \$1.6 million in the sales contributed by the operations acquired from Foulke Security on February 28, 2002, and the award of a national contract from Equity Office Properties on March 1, 2003, which contributed \$1.8 million in sales in the second quarter of 2003. The remainder of the sales increase was generated by net new business throughout the country. Operating profits increased by only \$0.1 million or 8.9% despite the significant increase in sales due to new business competitively bid at lower margins and start-up costs incurred in the second quarter of 2003 related to the new jobs acquired from Equity Office Properties.

Lighting sales increased \$1.5 million or 4.7% and gross profit margins improved during the second quarter of 2003 compared to the second quarter of 2002, however, operating profits decreased \$0.3 million or 13.5% primarily due to higher selling, general and administrative expenses. The increase in sales was primarily due to increased project work partially offset by the termination of certain national contracts during the second quarter of 2003. Higher bad debt provision due to increased customer bankruptcies and the cost of hiring additional branch managers contributed to the increase in selling, general and administrative expenses during the second quarter of 2003 compared to the same period in 2002.

Sales for Elevator decreased by \$0.9 million or 3.3% in the second quarter of 2003 compared to the same period in 2002, primarily due to reduced modernization sales in the Philadelphia and Chicago branches. Operating profits increased by \$0.4 million or 71.5% for the second quarter of 2003, compared to the corresponding quarter of 2002, primarily due to accrued losses on unprofitable modernization contracts that were completed in 2003 but impacted 2002 results.

Sales for the Other segment, which is comprised of CommAir Mechanical Services and ABM Facility Services, were down \$4.8 million or 30.8% for the second quarter of 2003 compared to the same period of 2002. The Other segment produced a profit of \$70,000 in the second quarter of 2003 compared to \$74,000 in the same period last year. Operating profits for the second quarter of 2002 included a \$0.5 million write-down of work-in-progress. The lower sales and operating profits for the second quarter of 2003 were primarily due to decreased capital project work as customers tightened their budgets and ABM Facility Services' loss of the Consolidated Freightways account in September 2002 after it declared bankruptcy.

Corporate expenses increased by \$1.7 million in the second quarter of 2003 compared to the same period of 2002. The increase

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was due to higher premiums paid for directors and officers' liability insurance and higher professional fees including expenses related to the due diligence performed for a proposed acquisition that was not completed.

### **Six Months Ended April 30, 2003 vs. Six Months Ended April 30, 2002**

Net income for the first half of 2003 was \$14.2 million (\$0.29 per diluted share), a decrease of \$7.8 million or 35.3% from the net income of \$22.0 million (\$0.43 per diluted share) for the first half of 2002. Pretax income for the first half of 2002 included a gain of \$4.3 million from an initial payment of \$6.5 million from the September 11th insurance claim. Declines in operating profits from the Janitorial segment, primarily the Northeast and Northwest regions, Lighting and Parking segments as well as higher Corporate expenses accounted for the decrease in net income. Partially offsetting the declines were operating profits totaling \$5.3 million from the Lakeside and Horizon acquisitions that did not impact results until after April 30, 2002.

Sales and other income (hereinafter called sales) for the first half of 2003 of \$1,170.5 million increased by \$117.1 million or 11.1% from \$1,053.4 million for the first half of 2002. The increase is primarily due to \$100.5 million in sales from acquisitions that did not impact results until after April 30, 2002. The remainder of the increase was attributable to new business, partially offset by the impact of contract terminations and declines in sales due to increased vacancies and decreased project work and extra services as customers tightened their budgets.

As a percentage of sales, operating expenses and cost of goods sold were 90.0% for the first half of 2003, compared to 89.6% for the first half of 2002. Consequently, as a percentage of sales, the Company's gross profit of 10.0% in the first half of 2003 was lower than the gross profit of 10.4% for the first half of 2002. The decline was due primarily to lower margins on new business, delays in planned terminations of unprofitable contracts in the Northeast region of Janitorial, a decline in sales from higher margin business due to increased vacancies, and higher reimbursements for out-of-pocket expenses from existing managed parking lot clients for which Parking had no margin benefit. Additionally, operating expenses for the first half of 2003 included higher insurance costs that could not be fully absorbed through increased pricing.

Selling, general and administrative expenses for the first half of 2003 were \$95.1 million compared to \$78.4 million for the corresponding period of 2002. The increase in selling, general and administrative expenses was due primarily to \$7.4 million of selling, general and administrative expenses related to Lakeside

and Horizon acquisitions that did not impact results until after the first half of 2002. The Northeast region of Janitorial contributed \$1.4 million to the increase primarily as a result of higher legal expenses and costs associated with implementing management changes in the region. Additionally, the first half of 2003 reflects a \$1.2 million increase in bad debt expense as well as higher employer contributions to the Company's 401(k) plan, which was enhanced effective January 1, 2002. Furthermore, corporate expenses for the first half of 2003 included higher directors and officers' insurance costs and professional fees. As a percentage of sales, selling, general and administrative expenses increased to 8.1% for the six months ended April 30, 2003 from 7.4% for the same period in 2002.

Interest expense, which includes loan amortization and commitment fees for the revolving credit facility, was \$0.3 million for the first half of 2003 compared to \$0.5 million for the same period in 2002. The decrease was primarily due to lower borrowings and interest rates during the first half of 2003, compared to the same period in 2002.

The effective federal and state income tax rate was 35.6% for the first half of 2003, compared to 38.0% for the first half of 2002. The lower effective tax rate was mostly due to the impact of a lower estimated state tax rate and a higher proportional benefit from the same level of estimated federal tax credits applied to a lower level of pretax income.

#### **Segment Information**

Under SFAS No. 131 criteria, Janitorial, Parking, Engineering, Security, Lighting, and Elevator are reportable segments. All other services are included in the "Other" segment. Corporate expenses are not allocated.

(In thousands)	Six months ended	
	2003	April 30, 2002
<b>Sales and Other Income:</b>		
Janitorial	\$ 674,357	\$ 571,029
Parking	186,074	177,839
Engineering	89,572	86,337
Security	76,797	66,794
Lighting	66,723	64,638
Elevator	55,474	54,727
Other	21,225	31,688
Corporate	233	350
	<u>\$1,170,455</u>	<u>\$1,053,402</u>
<b>Operating Profit:</b>		
Janitorial	\$ 23,377	\$ 27,170
Parking	1,612	2,831
Engineering	4,616	4,660
Security	2,502	2,260
Lighting	2,493	4,004
Elevator	1,994	1,524
Other	(53)	772
Corporate expense	(14,148)	(11,572)
	<u>Operating Profit</u>	<u>31,649</u>
Gain on insurance claim	—	4,300
Interest expense	(303)	(497)
	<u>Income before income taxes</u>	<u>\$ 35,452</u>
	\$ 22,090	\$ 35,452

The results of operations from the Company's segments for the six months ended April 30, 2003, compared to the same period in 2002, are more fully described below.

Sales for Janitorial were \$103.3 million or 18.1% higher in the first half of 2003 than the same half of 2002, primarily due to the \$100.5 million contribution from Lakeside acquired on July 12, 2002 and Horizon acquired on January 31, 2003. The remainder of the increase was attributable to new business, partially offset by the termination of unprofitable jobs in the Northeast and Southeast regions and the termination of a major contract due to collection issues in the Northwest region, declines in sales from existing contracts due to increased vacancies and decreased tag work or extra services as customers tightened their budgets. Operating profits in the first half of 2003 were \$3.8 million or 14.0% lower than the same period in 2002 primarily due to the \$6.3 million and \$1.1 million decline in operating profits in the Northeast and Northwest regions, respectively, which was partially offset by \$5.3 million of operating profit from Lakeside and Horizon. Additionally, operating expenses included higher insurance costs which could not be fully absorbed through increased pricing.

The decline in operating profits in the Northwest region of Janitorial was due to the loss of a major contract and higher legal fees primarily due to a gender discrimination lawsuit filed against the Company by a former employee. On May 19, 2003, a Washington state court jury awarded \$4 million in damages, plus plaintiff's costs, to the former employee which the Company will appeal. The Company believes that the verdict was inconsistent with the law and facts of the case and that it will be reversed upon appeal. Accordingly, the Company has not recorded any liability in its financial statements associated with the jury award.

The decline in operating profits in the Northeast region of Janitorial, especially in New York City, was primarily due to new business competitively priced at lower margins and a decline in sales from higher margin business due to increased vacancies, delays in planned terminations of unprofitable contracts, and bad weather in the first quarter of 2003. Further, first quarter 2002 results for New York City operations benefited from the extra clean-up work performed following the September 11th attacks. Additionally, the region's operating profits for the first half of 2003 included higher unused sick leave payments, legal fees related to a lawsuit in connection with the collection of outstanding amounts from a large former customer, and costs associated with implementing management changes in this region.

Parking sales increased by \$8.2 million or 4.6%, while its operating profits decreased by \$1.2 million or 43.1% during the first six months of 2003 compared to the first six months of 2002. The decrease in operating profits was primarily due to increased insurance costs which could not be fully absorbed through increased pricing, the adverse effect of the war against Iraq and fear of Severe Acute Respiratory Syndrome (SARS) on sales at airport and hotel facilities, and start-up costs incurred at the San Jose Airport. Of the \$8.2 million sales increase, \$4.7 million represented higher reimbursements for out-of-pocket expenses from existing managed parking lot clients for which Parking had no margin benefit. The remainder of the sales increase was generated by net new business, partially offset by the decline in sales from the hi-tech areas of San Francisco and Seattle where the economic downturn resulted in high office building vacancies, the loss of a major contract in Seattle, and the decline in sales at airport and hotel facilities.

Sales for Engineering increased \$3.2 million or 3.7% from the first half of 2002 to the first half of 2003 due to new business. Operating profits decreased by \$44,000 or 0.9% from the first half of 2002 to the first half of 2003, primarily due to a settlement with a competitor firm on a bid-related issue, difficulty in passing along insurance increases to customers, and consulting costs associated with a study to assist Engineering to expand into

new markets and broaden the scope of its services, partially offset by the savings from the delay in replacing a vacant sales position.

Security sales increased \$10.0 million or 15.0% in the first half of 2003 compared to the same period in 2002, primarily due to an increase of \$8.8 million in the sales contributed by the operations acquired from Triumph Security on January 26, 2002 and Foulke Security on February 28, 2002. Furthermore, the award of a national contract from Equity Office Properties on March 1, 2003 contributed \$1.8 million in sales in the first six months of 2003. Operating profits increased by only \$0.2 million or 10.7% despite the significant increase in sales due to new business competitively bid at lower margins, and start-up costs incurred in the second half of 2003 related to the new jobs acquired from Equity Office Properties.

Lighting sales increased \$2.1 million or 3.2% and gross profit margins improved during the first half of 2003 compared to the first half of 2002, but operating profits decreased \$1.5 million or 37.7% primarily due to higher selling, general and administrative expenses particularly in the Northeast and North Central regions. The decline in operating profits was partially offset by a \$0.3 million gain recognized in the first quarter of 2003 related to the early termination of a contract. Increase in sales was primarily due to increased project work, partially offset by the termination of certain national contracts during the first half of 2003. The Northeast and North Central regions changed management as well as hired additional managers in several branches and incurred higher labor-related costs due to training and double management during the transition.

Sales for Elevator increased by \$0.7 million or 1.4% in the first half of 2003 compared to the same period in 2002, primarily due to increased repair business and service extras, or work generating fees in addition to the regular contractual fee. Operating profits increased by \$0.5 million or 30.8% for the first half of 2003, compared to the corresponding period of 2002, primarily due to accrued losses on unprofitable modernization contracts that were completed in 2003 but impacted 2002 results.

Sales for the Other segment were down \$10.5 million or 33.0% for the first half. The Other segment produced a loss of \$53,000 in the first half of 2003 compared to a profit of \$0.8 million in the same period last year. The lower revenues and operating profits for the quarter were primarily due to decreased capital project work as customers tightened their budgets and ABM Facility Services' loss of the Consolidated Freightways account in September 2002 after it declared bankruptcy.

Corporate expenses increased by \$2.6 million in the first half of 2003 compared to the same period of 2002. The increase was due to higher premiums paid for directors and officers' liability insurance, higher professional fees including expenses related to the due diligence performed for a proposed acquisition that was not completed, and increased expenses related to the use of outside counsel while in the process of hiring a General Counsel. The new General Counsel was hired on May 1, 2003.

### **Recent Accounting Pronouncements**

In July 2002, the Financial Accounting Standards Board (FASB) issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." SFAS No. 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. Examples of costs covered by the standard include lease termination costs and certain employee severance costs that are associated with a restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS No.146 replaces EITF Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." SFAS No. 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. Management does not expect this statement to have a material effect on the Company's results of operations or financial condition.

In November 2002, FASB issued Financial Interpretation No. (FIN) 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN 45 requires that upon issuance of a guarantee, the guarantor must disclose and recognize a liability for the fair value of the obligation it assumes under that guarantee. The initial recognition and measurement requirement of FIN 45 is effective for guarantees issued or modified after December 31, 2002 while the disclosure requirements are effective for interim and annual periods ending after December 15, 2002. At April 30, 2003, the Company has no guarantees to disclose under FIN 45.

In January 2003, FASB issued FIN 46, "Consolidation of Variable Interest Entities," an interpretation of ARB No. 51. FIN 46 addresses the consolidation by business enterprises of variable interest entities as defined in the interpretation. FIN 46 applies immediately to variable interests in variable interest entities created after January 31, 2003; and for the first fiscal year or interim period beginning after June 15, 2003 for variable interest entities in which an enterprise holds a variable interest that it acquired before February 1, 2003. Analysis of the Company's interest in variable interest entities at April 30, 2003 indicates

that no consolidation will be required. The application of FIN 46 is not expected to have a material effect on the Company's results of operations or financial condition.

### **Critical Accounting Policies and Estimates**

The preparation of consolidated financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, sales and expenses. On an ongoing basis, the Company evaluates its estimates, including those related to self-insurance reserves, allowance for doubtful accounts, valuation allowance for the net deferred income tax asset, contingencies and litigation liabilities. The Company bases its estimates on historical experience, independent valuations, and various other assumptions that are believed to be reasonable under the circumstances, 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 may differ from these estimates under different assumptions or conditions.

The Company believes the following critical accounting policies affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.

*Self-Insurance Reserves:* Certain insurable risks such as general liability, automobile property damage and workers' compensation are self-insured by the Company. However, the Company has umbrella insurance coverage for certain risk exposures subject to specified limits. Accruals for claims under the Company's self-insurance program are recorded on a claim-incurred basis. The Company uses an independent actuarial firm to annually evaluate and estimate the range of the Company's claim costs and liabilities. The Company accrues the minimum amount of the actuarial range of exposure. Using the annual actuarial report, management develops annual insurance costs for each division, expressed as a rate per \$100 of exposure (labor and revenue) to estimate insurance costs on a quarterly basis. Additionally, management monitors new claims and claim development to assess the adequacy of the insurance reserves. The estimated future charge is intended to reflect the recent experience and trends. If the number of claims incurred were to increase, or the severity of the claims were to increase, the Company may be required to record an additional expense for self-insurance liabilities.

*Allowance for Doubtful Accounts:* The Company's accounts receivable arise from services provided to its customers and are generally due and payable on terms varying from the receipt of invoice to net thirty days. The Company estimates an allowance for accounts it does not consider collectible. Changes in the financial



condition of the customer or adverse development in negotiations or legal proceedings to obtain payment could result in the actual loss exceeding the estimated allowance.

*Deferred Income Tax Asset Valuation Allowance:* Deferred income taxes reflect the impact of temporary differences between the amount of assets and liabilities recognized for financial reporting purposes and such amounts recognized for tax purposes. If management determines it is more likely than not that the net deferred tax asset will be realized, no valuation allowance is recorded. At April 30, 2003, the net deferred tax asset was \$65.9 million and no valuation allowance was recorded. Should future income be less than anticipated, the net deferred tax asset may not be recoverable.

*Contingencies and Litigation:* ABM and certain of its subsidiaries have been named defendants in certain litigations arising in the ordinary course of business including certain environmental matters. When a loss is probable and estimable the Company records the estimated loss. The actual loss may be greater than estimated or litigation where the outcome was not considered probable may result in a loss.

### **Environmental Matters**

The nature of the Company's operations, primarily services, would not ordinarily involve it in environmental contamination. However, the Company's operations are subject to various federal, state and/or local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, such as discharge into soil, water and air, and the generation, handling, storage, transportation and disposal of waste and hazardous substances. These laws generally have the effect of increasing costs and potential liabilities associated with the conduct of the Company's operations, although historically they have not had a material adverse effect on the Company's financial position, results of operations, or cash flows.

The Company is currently involved in three proceedings relating to environmental matters: one involving alleged potential soil contamination at a former Company facility in Arizona; one involving alleged potential soil and groundwater contamination at a former dry-cleaning facility leased by the Company in Nevada; and one involving alleged potential soil and groundwater contamination at a third party recycling center in Southern California. While it is difficult to predict the ultimate outcome of these matters, based on information currently available, management believes that none of these matters, individually or in the aggregate, are reasonably likely to have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Two of the three proceedings are subject to ongoing settlement negotiations and a reserve of \$0.5 million has been set aside for the potential liability. The liability related to the other claim is neither probable nor estimable, hence no accrual has been made related to this matter.

Two other proceedings relating to environmental matters that existed at January 31, 2003 were resolved in the second quarter of 2003. A settlement agreement was executed and a payment of \$0.1 million was made for one proceeding, which involved alleged potential soil contamination at a former parking facility leased by the Company in Washington. The other proceeding involving alleged potential soil and groundwater contamination at a Company facility in Florida was resolved and does not require any further action.

### **Safe Harbor Statement**

Cautionary Safe Harbor Disclosure for Forward Looking Statements under the Private Securities Litigation Reform Act of 1995: Because of the factors set forth below, as well as other variables affecting the Company's operating results, past financial performance should not be considered a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods. The statements contained herein which are not historical facts are forward-looking statements that are subject to meaningful risks and uncertainties, including but not limited to: (1) significant decreases in commercial real estate occupancy, resulting in reduced demand and pricing pressures on building maintenance and other facility services in the Company's major markets, (2) inability to pass through cost increases in a timely manner, or at all, or to reduce expenses when sales decline, (3) loss or bankruptcy of one or more of the Company's major customers, which could adversely affect the Company's ability to collect its accounts receivable or recover its deferred costs as well as having an adverse impact on future revenue, (4) major collective bargaining issues that may cause loss of revenues or cost increases that non-union competitors can use to their advantage in gaining market share, (5) significant shortfalls in adding additional customers in existing and new territories and markets, (6) inability to successfully integrate acquisitions into the Company, (7) a protracted slowdown in the Company's acquisition activities, (8) legislation or other governmental action that severely impacts one or more of the Company's lines of business, such as price controls that could restrict price increases, or the unrecovered cost of any universal employer-paid health insurance, as well as government investigations that adversely affect the Company, (9) reduction or revocation of the Company's line of credit, which would increase interest expense or the cost of capital, (10) cancellation or nonrenewal of the Company's primary insurance policies, as many customers contract out services based

on the contractor's ability to provide adequate insurance coverage and limits, (11) catastrophic uninsured or underinsured claims against the Company, the inability of the Company's insurance carriers to pay otherwise insured claims, or inadequacy in the Company's reserve for self-insured claims, (12) inability to employ entry level personnel at competitive wage rates due to labor shortages, (13) resignation, termination, death or disability of one or more of the Company's key executives, which could adversely affect customer retention and day-to-day management of the Company, and (14) other material factors that are disclosed from time to time in the Company's public filings with the United States Securities and Exchange Commission, such as reports on Forms 8-K and 10-K.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The Company does not issue or invest in financial instruments or their derivatives for trading or speculative purposes. The operations of the Company are conducted primarily in the United States, and, as such, are not subject to material foreign currency exchange rate risk. The Company has no outstanding debt. Although the Company had over \$3 million in cash equivalents at April 30, 2003, market rate risk associated with falling interest rates in the United States is not material.

### **Item 4. Controls and Procedures**

(a) *Evaluation of disclosure controls and procedures.* ABM's chief executive officer and ABM's chief financial officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 Rules 13a-14(c) and 15d-14(c) as of a date (the "Evaluation Date") within 90 days prior to the filing date of this Form 10-Q, have concluded that as of the Evaluation Date the Company's disclosure controls and procedures were adequate and designed to ensure that material information relating to the Company including its consolidated subsidiaries would be made known to them by others within those entities.

(b) *Changes in internal controls.* There were no significant changes in the Company's internal controls or, to the Company's knowledge, in other factors that could significantly affect these controls subsequent to the Evaluation Date.

**PART II. OTHER INFORMATION**

**Item 4. Submission of Matters to a Vote of Stockholders**

a) The Annual Meeting of Stockholders was held on March 11, 2003.

b) The following directors were elected by a vote of stockholders: Linda L. Chavez, Theodore T. Rosenberg, Henrik C. Slipsager, and William W. Steele. Linda L. Chavez, Theodore T. Rosenberg, and Henrik C. Slipsager will serve for a term ending at the annual meeting in the year 2006. William W. Steele will serve for a term ending at the annual meeting in the year 2004.

The following directors remained in office: Luke S. Helms, Maryellen C. Herringer, Charles T. Horngren, Henry L. Kotkins, Jr., and Martinn H. Mandles.

c) The following matters were voted upon at the meeting:

(1) Proposal 1 - Election of Directors.

Nominee	For	Withheld
Linda L. Chavez	39,453,954	3,540,423
Theodore T. Rosenberg	41,555,391	1,438,986
Henrik C. Slipsager	40,175,655	2,818,722
William W. Steele	40,977,911	2,016,466

**Item 6. Exhibits and Reports on Form 8-K**

(a) Exhibits:

Exhibit 4.1 - Credit Agreement dated as of June 28, 2002, among ABM Industries Incorporated, various financial institutions and Bank of America, N.A., as Administrative Agent, as amended through April 23, 2003

Exhibit 99.1 - Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Exhibit 99.2 - Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(b) Reports on Form 8-K: No reports on Form 8-K were filed during the quarter ended April 30, 2003.

**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.

June 11, 2003

ABM Industries Incorporated

/s/ George B. Sundby \_\_\_\_\_

George B. Sundby  
Senior Vice President and  
Chief Financial Officer  
Principal Financial Officer

June 11, 2003

/s/ Maria Placida Y. de la Peña \_\_\_\_\_

Maria Placida Y. de la Peña  
Vice President and Controller  
Chief Accounting Officer

## CERTIFICATIONS

I, Henrik C. Slipsager, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ABM Industries Incorporated;
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 officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

June 11, 2003

/s/ Henrik C. Slipsager

\_\_\_\_\_  
Henrik C. Slipsager  
Chief Executive Officer  
(Principal Executive Officer)

I, George B. Sundby, certify that:

1. I have reviewed this quarterly report on Form 10-Q of ABM Industries Incorporated;
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 officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

June 11, 2003

/s/ George B. Sundby \_\_\_\_\_

George B. Sundby  
Chief Financial Officer  
(Principal Financial Officer)

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
4.1	Credit Agreement dated as of June 28, 2002, among ABM Industries Incorporated, various financial institutions and Bank of America, N.A., as Administrative Agent, as amended through April 23, 2003
99.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.2	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002



SECOND AMENDMENT

THIS SECOND AMENDMENT dated as of April 23, 2003 (this "Amendment") amends the Credit Agreement dated as of June 28, 2002 (as previously amended, the "Credit Agreement") among ABM Industries Incorporated (the "Borrower"), various financial institutions (the "Lenders") and Bank of America, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not otherwise defined herein have the respective meanings given to them in the attached Exhibit A.

WHEREAS, the Borrower, the Lenders and the Administrative Agent have entered into the Credit Agreement; and

WHEREAS, the parties hereto desire to amend the Credit Agreement to, among other things, increase the Aggregate Commitments, add certain financial institutions as parties thereto and revise certain covenants, all as more fully set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 Amendments. Subject to the satisfaction of the conditions precedent set forth in Section 3, the Credit Agreement is amended in its entirety to read as set forth on the attached Exhibit A.

SECTION 2 Representations and Warranties. The Borrower represents and warrants to the Administrative Agent and the Lenders that, after giving effect to the effectiveness hereof:

(a) each warranty set forth in Article V of the Credit Agreement, as amended hereby (as so amended, the "Amended Credit Agreement") is true and correct in all material respects as of the date of the execution and delivery of this Amendment by the Borrower, with the same effect as if made on such date;

(b) no Default exists; and

(c) there has not occurred a material adverse change since October 31, 2002 in the operations, business, properties or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole or in the facts and information regarding such Persons as represented to date.

SECTION 3 Effectiveness. The amendments and the waiver set forth herein shall become effective when the Administrative Agent shall have received the following:

(a) counterparts of this Amendment executed by the Borrower and all Lenders (including any Person which is to become a party to the Amended Credit Agreement (a "New Lender"));

(b) a new Note payable to each New Lender;

(c) an opinion of counsel to the Borrower and the Guarantors in form and substance reasonably acceptable to the Administrative Agent;

EXHIBIT 4.1

(d) certified copies of resolutions of the Board of Directors (or similar governing body) of the Borrower and each Guarantor with respect to the transactions contemplated hereby;

(e) evidence that the Borrower has paid all accrued and invoiced fees and expenses of the Administrative Agent and the Arranger (including Attorney Costs);

(f) an amendment fee for each Lender that delivers an executed signature page to this Amendment to the Administrative Agent by 5:00 p.m. on April 22, 2003 in an amount previously agreed to by the Administrative Agent, the Borrower and such Lender; and

(g) such other documents as the Administrative Agent may reasonably request.

SECTION 4 Miscellaneous.

4.1 Continuing Effectiveness, etc. As amended hereby, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects. After the effectiveness of this Amendment, all references in the Credit Agreement and the other Loan Documents to "Credit Agreement" or similar terms shall refer to the Credit Agreement as amended hereby.

4.2 Counterparts. This Amendment may be executed in any number of counterparts and by the different parties on separate counterparts, and each such counterpart shall be deemed to be an original but all such counterparts shall together constitute one and the same Amendment.

4.3 Governing Law. This Amendment shall be a contract made under and governed by the laws of the State of California applicable to contracts made and to be performed entirely within such state.

4.4 Successors and Assigns. This Amendment shall be binding upon the Borrower, the Lenders and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of the Borrower, the Lenders and the Administrative Agent and the respective successors and assigns of the Lenders and the Administrative Agent

EXHIBIT 4.1

Delivered as of the day and year first above written.

ABM INDUSTRIES INCORPORATED

By: /s/ George B. Sundby

-----  
Title: CFO & SVP

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

By: /s/ Ken Puro

-----  
Title: VICE PRESIDENT

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

By: /s/ Lisa M. Thomas

-----  
Title: Senior Vice President

S-3

U.S. BANK NATIONAL ASSOCIATION, as  
Documentation Agent and as a Lender

By: /s/ Douglas A. Rich

-----  
Title: VICE PRESIDENT  
-----

KEYBANK NATIONAL ASSOCIATION, as  
Syndication Agent and as a Lender

By: /s/ James J. Teichman

-----  
Title: Portfolio Manager  
-----

WACHOVIA BANK, NATIONAL ASSOCIATION

By: /s/ Anne L. Sayles

-----  
Title: Director



THE BANK OF NEW YORK

By: /s/ Elizabeth T. Ying

-----  
Title: Vice President

S-7

COMERICA BANK

By: /s/ John Bonifacio

-----  
Title: Vice President

S-8

LASALLE BANK NATIONAL ASSOCIATION

By: /s/ Hollis J. Griffin

-----  
Title: VICE PRESIDENT

BNP PARIBAS

By: /s/ Katherine Wolfe /s/ Hiro Ebihara

-----  
Title: Director Associate

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CREDIT AGREEMENT

Dated as of June 28, 2002

among

ABM INDUSTRIES INCORPORATED,

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swing Line Lender and L/C Issuer,

U.S. BANK NATIONAL ASSOCIATION,  
as Documentation Agent,

KEYBANK NATIONAL ASSOCIATION,  
as Syndication Agent,

and

The Other Lenders Party Hereto

BANC OF AMERICA SECURITIES LLC,  
Sole Lead Arranger and Sole Book Manager

=====

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FORM OF

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- B Swing Line Loan Notice
- C Note
- D Compliance Certificate
- E Assignment and Assumption
- F Guaranty
- G Opinion of Orrick, Herrington & Sutcliffe LLP
- H Opinion of Harry H. Kahn
- I Form of Increase Request

[Schedules and Exhibits have been omitted, but will be furnished  
supplementally to the Securities and Exchange Commission upon request]

CREDIT AGREEMENT

This CREDIT AGREEMENT (the "Agreement") dated as of June 28, 2002 is among ABM INDUSTRIES INCORPORATED, a Delaware corporation (the "Company"), each lender from time to time party hereto (collectively, the "Lenders" and individually, each a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The Company has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual agreements contained herein the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS AND ACCOUNTING TERMS

1.1 DEFINED TERMS. As used in this Agreement, the following terms have the respective meanings set forth below:

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

"Adjusted Consolidated EBITDA" means, for any period, Consolidated EBITDA for such period; provided that in calculating Adjusted Consolidated EBITDA,

(a) if the Company or any Subsidiary makes a Permitted Acquisition during such period for aggregate consideration in excess of \$10,000,000, the EBITDA of the Person or assets acquired (and, solely for the purpose of determining pro forma compliance with financial covenants pursuant to Section 7.11, any Person or assets to be acquired) shall be included on a pro forma basis for such period (assuming the consummation of such Acquisition and the incurrence or assumption of any Indebtedness in connection therewith occurred on the first day of such period, but adjusted to add back certain non-recurring expenses to the extent disclosed to and reasonably approved by the Required Lenders) based upon (i) to the extent available, (x) the audited consolidated financial statements of such acquired Person (or with respect to such acquired assets) as at the end of the fiscal year of such Person (or of the seller of such assets) preceding such Acquisition and (y) any subsequent unaudited financial statements for such Person (or with respect to such acquired assets) for the period prior to such Acquisition so long as such statements were prepared on a basis consistent with the audited financial statements referred to above or (ii) to the extent the items listed in clause (i) are not available, such historical financial statements and other information as is disclosed to, and reasonably approved by, the Required Lenders; and

EXHIBIT 4.1

(b) if the Company or any Subsidiary makes a Disposition (or a series of related Dispositions) during such period for aggregate consideration in excess of \$10,000,000, the EBITDA of any Person (or division or similar business unit) disposed of by the Company or any Subsidiary during such period shall be excluded on a pro forma basis for such period (assuming the consummation of such Disposition occurred on the first day of such period).

"Adjusted Consolidated EBITDAR" means, for any period, the sum of (a) Adjusted Consolidated EBITDA for such period plus (b) rental expense for such period.

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

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.2, or such other address or account as the Administrative Agent may from time to time notify the Company and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

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

"Aggregate Commitments" means the Commitments of all the Lenders. The Aggregate Commitments on the Second Amendment Effective Date are \$250,000,000.

"Agreement" has the meaning specified in the introductory paragraph hereto.

## EXHIBIT 4.1

"Applicable Rate" means, from time to time, the following percentages per annum, based upon the Leverage Ratio as set forth below:

## APPLICABLE RATE

PRICING LEVEL	LEVERAGE RATIO	COMMITMENT FEE	EURODOLLAR RATE/ IBOR RATE/ LETTERS OF CREDIT	BASE RATE
1	> 2.0 to 1.0	0.300%	1.500%	0.250%
2	> or = 1.75 to 1.0 but < 2.0 to 1.0	0.250%	1.250%	0.250%
3	> or = 1.25 to 1.0 but < 1.75 to 1.0	0.200%	1.000%	0.000%
4	< 1.25 to 1.0	0.175%	0.875%	0.000%

Initially, the applicable Pricing Level shall be Pricing Level 3. Thereafter, the applicable Pricing Level shall be adjusted, to the extent applicable, 60 days (or, in the case of the last fiscal quarter of any fiscal year, 90 days) after the end of each fiscal quarter based on the Leverage Ratio as of the last day of such fiscal quarter; provided that if the Company fails to deliver the financial statements required by Section 6.1(a) or (b), as applicable, and the related Compliance Certificate required by Section 6.2(b) by the 60th day (or, if applicable, the 90th day) after any fiscal quarter, Pricing Level 1 shall apply until such financial statements are delivered.

"Arranger" means Banc of America Securities LLC, in its capacity as sole lead arranger and sole book manager.

"Assignment and Assumption" means an Assignment and Assumption substantially in the form of Exhibit E.

"Attorney Costs" means and includes all reasonable fees, expenses and disbursements of any law firm or other external counsel and, without duplication, the allocated cost of internal legal services and all expenses and disbursements of internal counsel.

"Attributable Indebtedness" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Company and its Subsidiaries for the fiscal year ended October 31, 2002, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, including the notes thereto.

EXHIBIT 4.1

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.6, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.2.

"Bank of America" means Bank of America, N.A. and its successors.

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

"Base Rate Loan" means a Revolving Loan or a Swing Line Loan, as the context requires, that bears interest by reference to the Base Rate.

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

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

"Cash Collateralize" has the meaning specified in Section 2.3(g).

"Change of Control" means, with respect to any Person, an event or series of events by which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding the Rosenberg Family, any employee benefit plan of such person or its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 25% or more of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right).

"Closing Date" means the first date all the conditions precedent in Section 4.1 are satisfied or waived in accordance with Section 4.1 (or, in the case of Section 4.1(b), waived by the Person entitled to receive the applicable payment).

EXHIBIT 4.1

"Code" means the Internal Revenue Code of 1986.

"Commitment" means, as to each Lender, its obligation to (a) make Revolving Loans to the Company pursuant to Section 2.1, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Company" has the meaning specified in the introductory paragraph hereto.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Consolidated EBITDA" means, for any period, an amount equal to Consolidated Net Income for such period plus, to the extent deducted in calculating such Consolidated Net Income, (i) Consolidated Interest Charges, (ii) provisions for federal, state, local and foreign income taxes payable by the Company and its Subsidiaries, (iii) depreciation and amortization expense and (iv) all non-cash, non-recurring and extraordinary charges (including charges resulting from the application of Financial Accounting Standard No. 142) minus, to the extent included in such Consolidated Net Income, all non-recurring and extraordinary gains or income (other than non-recurring income arising from settlements of business interruption insurance claims related to the terrorist attack on the World Trade Center in New York on September 11, 2001).

"Consolidated Interest Charges" means, for any period, for the Company and its Subsidiaries on a consolidated basis, the sum, without duplication, of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Company and its Subsidiaries in connection with borrowed money (including capitalized interest) or the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Company and its Subsidiaries with respect to such period under capital leases or with respect to Synthetic Lease Obligations that, in each case, is treated as interest in accordance with GAAP.

"Consolidated Net Income" means, for any period, the consolidated net income of the Company and its Subsidiaries for such period.

"Consolidated Net Worth" means, as of any date of determination, Shareholders' Equity on such date.

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

"Control" has the meaning specified in the definition of "Affiliate."

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

EXHIBIT 4.1

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

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would (if not cured or otherwise remedied during such time) be an Event of Default.

"Default Rate" means (a) with respect to Base Rate Loans, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; (b) with respect to Eurodollar Rate Loans, an interest rate equal to (i) the Eurodollar Rate plus (ii) the Applicable Rate plus (iii) 2% per annum; and (c) with respect to IBOR Rate Loans, an interest rate equal to (i) the IBOR Rate plus (ii) the Applicable Rate plus (iii) 2% per annum, in each case to the fullest extent permitted by applicable Laws.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Revolving Loans, participations in L/C Obligations or participations in Swing Line Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

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

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

"Earn-out" means, with respect to any Person, any payment that may be required to be made by such Person in connection with an Acquisition, where the obligation of such Person to make such payment (or the amount thereof) is contingent upon the financial or other performance of the Person or asset acquired. The amount of any Earn-out shall equal the anticipated amount thereof as reasonably determined in good faith by the Company.

"EBITDA" means, for any Person for any period, the consolidated net income of such Person for such period plus, to the extent deducted in determining such consolidated net income, interest expense, income tax expense, depreciation and amortization of such Person.

"Eligible Assignee" has the meaning specified in Section 10.7(g).

"Environmental Claims" means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment.



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"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

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

"Eurodollar Interest Period" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter (or on such other date as all Lenders shall agree), as selected by the Company in a Revolving Loan Notice; provided that:

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

(ii) except as otherwise agreed by all Lenders, any Eurodollar Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Eurodollar Interest Period) shall end on the last Business Day of the calendar month at the end of such Eurodollar Interest Period; and

(iii) no Eurodollar Interest Period shall extend beyond the scheduled Maturity Date.

"Eurodollar Rate" means for any Interest Period with respect to any Eurodollar Rate Loan:

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

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

(c) if the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 4:00 p.m. (London time) two Business Days prior to the first day of such Interest Period.

"Eurodollar Rate Loan" means a Revolving Loan that bears interest at a rate based on the Eurodollar Rate.

"Event of Default" has the meaning specified in Section 8.1.

"Existing Credit Agreement" means the Credit Agreement dated as of June 25, 1997 among the Company, Bank of America (then known as Bank of America National Trust and Savings Association), as agent, and a syndicate of lenders.

"Existing Letters of Credit" means the letters of credit listed on Schedule 1 issued under the Existing Credit Agreement.

"Federal Funds Rate" means, for any day, the 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 by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal

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Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the letter agreement dated May 29, 2002 among the Company, the Administrative Agent and the Arranger.

"Fixed Charge Coverage Ratio" means, as of any date of determination, the ratio of (a) Adjusted Consolidated EBITDAR for the period of the four prior fiscal quarters ending on such date to (b) the sum, without duplication, of (i) Consolidated Interest Charges for such period plus (ii) rent expense for such period plus (iii) scheduled principal payments of long-term Indebtedness required to be made during such period.

"Foreign Lender" has the meaning specified in Section 10.13(a).

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Funded Indebtedness" means all Indebtedness of the Company and its Subsidiaries, excluding (i) contingent obligations in respect of commercial letters of credit and Guarantees (except, in each case, to the extent constituting Guarantees in respect of Indebtedness of a Person other than the Company or any Subsidiary), (ii) obligations under Swap Contracts and (iii) Indebtedness of the Company to Subsidiaries and Indebtedness of Subsidiaries to the Company or to other Subsidiaries.

"GAAP" means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee

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in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means all Subsidiaries of the Company that have executed a counterpart of the Guaranty.

"Guaranty" means the Guaranty made by the Guarantors in favor of the Administrative Agent on behalf of the Lenders, substantially in the form of Exhibit F.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Honor Date" has the meaning specified in Section 2.3(c)(i).

"IBOR Interest Period" means, with respect to any IBOR Rate Loan, each period commencing on the date such Loan is made or continued or converted from a Base Rate Loan to an IBOR Rate Loan or the last day of the next preceding IBOR Interest Period with respect to such IBOR Rate Loan, and ending one, two, three, four, five, six or seven days thereafter, as the Company may select as provided in Section 2.4(b). Notwithstanding the foregoing: (a) each IBOR Interest Period shall end on a Business Day; (b) no IBOR Interest Period may extend beyond the scheduled Maturity Date; and (c) no more than four IBOR Interest Periods shall be in effect at the same time.

"IBOR Rate" means the interest rate at which Bank of America's Grand Cayman Banking Center, Grand Cayman, British West Indies, would offer Dollar deposits for the applicable Interest Period to other major banks in the offshore Dollar interbank market.

"IBOR Rate Loan" means a Swing Line Loan that bears interest at a rate based on the IBOR Rate.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

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

(b) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and (ii) Earn-outs owed by such Person with respect to any Acquisition);

(c) all Attributable Indebtedness of such Person under capital leases and with respect to Synthetic Lease Obligations;

(d) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties and similar instruments;

(e) net obligations of such Person under any Swap Contract;

(f) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; and

(g) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or similar entity in which such Person is a general partner or with respect to which such Person has liability under applicable laws for the obligations of such entity, except to the extent that such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Indemnified Liabilities" has the meaning set forth in Section 10.5.

"Indemnitees" has the meaning set forth in Section 10.5.

"Interest Payment Date" means (a) as to any Eurodollar Rate Loan or IBOR Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means a Eurodollar Interest Period or an IBOR Interest Period, as the context requires.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other

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Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning set forth in Section 5.16.

"IRS" means the United States Internal Revenue Service.

"Joint Venture" means a partnership, limited liability company, joint venture or other similar legal arrangement (whether created by contract or conducted through a separate legal entity) now or hereafter formed by the Company or any of its Subsidiaries with another Person in order to conduct a common venture or enterprise with such Person.

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

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Pro Rata Share.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"L/C Issuer" means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder; provided that solely with respect to certain Existing Letters of Credit which were issued by Bank of America, KeyBank National Association ("KeyBank") and U.S. Bank National Association ("U.S. Bank"), KeyBank and U.S. Bank shall also be L/C Issuers (and the relevant provisions of this Agreement shall be modified to account for the fact that such Existing Letters of Credit have been issued by multiple issuers).

"L/C Obligations" means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the L/C Issuer and the Swing Line Lender.

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"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Administrative Agent.

"Letter of Credit" means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

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

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" means an extension of credit by a Lender to the Company under Article II in the form of a Revolving Loan or a Swing Line Loan.

"Loan Documents" means this Agreement, each Note, the Fee Letter, and the Guaranty.

"Loan Parties" means, collectively, the Company and each Guarantor, it being understood that "Loan Parties" shall not include any Subsidiary that has been released as a Guarantor pursuant to Section 9.11.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties or condition (financial or otherwise) of the Company or the Company and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Maturity Date" means (a) July 1, 2005 or (b) such earlier date upon which the Loans and other Obligations become due in accordance with the terms hereof.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Note" means a promissory note made by the Company in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit C.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Outstanding Amount" means (a) with respect to Revolving Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and repayments occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other change in the aggregate amount of the L/C Obligations as of such date, including as a result of reimbursement of any outstanding unpaid drawing under any Letter of Credit or any reduction in the maximum amount available for drawing under any Letter of Credit taking effect on such date.

"Participant" has the meaning specified in Section 10.7(d).

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Permitted Acquisition" means an Acquisition that meets each of the following requirements: (a) the Person to be acquired is, or the assets to be acquired are for use in, in the same or similar line of business as the Company, (b) in the case of the Acquisition of a Person, such Acquisition has been approved by the board of directors or similar governing body and, if applicable, the shareholders of the Person to be acquired, (c) the Company is and will be in pro forma compliance with each of the financial covenants contained in Section 7.11 before and after giving effect to such Acquisition, (d) the aggregate consideration (other than consideration to be paid in common stock of the Company, but including Earn-outs, cash and assumed debt) to be



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paid by the Company in connection with such Acquisition (or any series of related Acquisitions) does not exceed Consolidated EBITDA for the most recent period of four consecutive fiscal quarters for which the Company has delivered financial statements pursuant to Section 6.1, (e) no Default shall exist at the time of, or shall result from, such Acquisition and (f) if the aggregate consideration (including consideration to be paid in common stock of the Company, Earn-outs, cash and assumed debt) to be paid by the Company in connection with such Acquisition is equal to or greater than \$10,000,000, the Company has delivered to the Administrative Agent at least 10 days prior to the consummation of such Acquisition a pro forma Compliance Certificate for the fiscal quarter most recently ended (calculated as if such Acquisition had occurred on the first day of the period of four consecutive fiscal quarters ending on the last day of such fiscal quarter).

"Permitted Investments" means (a) direct obligations of, or obligations fully guaranteed by, the United States or any agency thereof; (b) direct obligations of, or obligations fully guaranteed by, any State, territory or possession of the United States (including the District of Columbia) or any agency thereof which have a short-term rating of at least SP-1 by S&P (as defined below) or MIG-1 by Moody's (as defined below) or a long-term rating of at least A by S&P or A1 by Moody's (or, in each case, the equivalent thereof by another Rating Agency (as defined below)); (c) commercial paper issued by corporations or financial institutions which have the highest short-term or long-term rating, as applicable, of at least one Rating Agency and at least the second highest short-term or long-term rating, as applicable, of another Rating Agency; (d) unsecured promissory notes (other than commercial paper) issued by corporations or financial institutions which have a short-term debt rating of at least A-1 from S&P and P-1 from Moody's (or the equivalent thereof by another Rating Agency) and a long-term debt rating of at least A from S&P and A-1 from Moody's (or the equivalent thereof by another Rating Agency); (e) time deposits with, and certificates of deposit, acceptances and similar instruments issued by, (i) any Lender or (ii) any office of any bank or trust company whose certificates of deposit are rated in one of the two highest grades by at least one Rating Agency; (f) repurchase agreements entered into with a bank or trust company described in clause (e) (or with securities broker-dealers of nationally recognized standing) with respect to obligations described in clause (a); (g) obligations of United States or foreign commercial banks having a minimum short-term debt rating of F1 from Fitch; and (h) shares of open-ended investment companies registered under the Investment Company Act of 1940; provided that each such investment company complies with Rule 2a-7 of the Securities Exchange Act of 1934, maintains a constant net asset value, offers daily liquidity and has a weighted average maturity of not more than 90 days. For purposes of the foregoing, "Rating Agency" means S&P, Moody's, Fitch or any other nationally-recognized credit rating agency; "Fitch" means Fitch, Inc., doing business as Fitch Ratings; "Moody's" means Moody's Investors Service, Inc.; and "S&P" means Standard & Poor's Rating Services.

"Permitted Long-Term Indebtedness" means Indebtedness of the Company or a Guarantor which (a) requires no payments of principal until the date which is 91 days after the scheduled Maturity Date or (b) is incurred to finance an Acquisition and is intended to be replaced, and is in fact replaced, by Indebtedness described in the preceding clause (a) within six months after the incurrence thereof.

"Permitted Stock Repurchases" means repurchases or redemptions by the Company of its capital stock for fair and reasonable consideration not exceeding (a) \$45,000,000 in aggregate amount during the fiscal year ending October 31, 2002 and (b) \$35,000,000 in aggregate amount

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during any fiscal year thereafter; provided that the Company may add up to \$10,000,000 of the unused portion of such limit for any fiscal year to the limit for the immediately succeeding fiscal year.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Company or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Pro Rata Share" means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments at such time; provided that if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.2, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Register" has the meaning set forth in Section 10.7(c).

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans, a Revolving Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.2, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

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

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"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other equity interest of the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other equity interest or of any option, warrant or other right to acquire any such capital stock or other equity interest.

"Revolving Borrowing" means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.1.

"Revolving Loan" has the meaning specified in Section 2.1.

"Revolving Loan Notice" means a notice of (a) a Revolving Borrowing, (b) a conversion of Revolving Loans from one Type to the other or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.2(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Rosenberg Family" means the lineal descendants of Morris Rosenberg, their respective spouses, any trust for the benefit of the foregoing and any other Person more than 50% of the equity of which is owned by any of the foregoing.

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

"Second Amendment Effective Date" means the date of the effectiveness of the Second Amendment to this Agreement.

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Company and its Subsidiaries as of that date determined in accordance with GAAP.

"SPC" has the meaning specified in Section 10.7(h).

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

"Surety Bond" means, with respect to any Person, a bid bond, performance bond, payment bond, maintenance bond, license bond, permit bond or similar bond issued on behalf of such Person by a bonding company or other surety.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options,

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

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

"Swing Line" means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.4.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.4.

"Swing Line Lender" means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.4(a).

"Swing Line Loan Notice" means a notice of (a) a Swing Line Borrowing, (b) a conversion of Swing Line Loans from one Type to the other or (c) a continuation of Swing Line Loans, pursuant to Section 2.4(b), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Sublimit" means an amount equal to the lesser of (a) \$20,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

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

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"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Type" means, (a) with respect to a Revolving Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan and (b) with respect to a Swing Line Loan, its character as a Base Rate Loan or an IBOR Rate Loan.

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

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning set forth in Section 2.3(c)(i).

1.2 OTHER INTERPRETIVE PROVISIONS.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) (i) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term "including" is by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(d) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(e) Except to the extent otherwise specified, references herein to "fiscal quarter" and "fiscal year" mean such fiscal periods of the Company.

EXHIBIT 4.1

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

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

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

1.5 REFERENCES TO AGREEMENTS AND LAWS. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

1.6 TIMES OF DAY. Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

1.7 LETTER OF CREDIT AMOUNTS. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit under any and all circumstances at or after such time in accordance with such Letter of Credit or the Letter of Credit Application therefor, whether or not such maximum face amount is in effect at such time.

ARTICLE II  
THE COMMITMENTS AND CREDIT EXTENSIONS

2.1 REVOLVING LOANS.

EXHIBIT 4.1

Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Company from time to time on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided that after giving effect to any Revolving Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed the amount of such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.1, prepay under Section 2.5, and reborrow under this Section 2.1. Revolving Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.2 PROCEDURE FOR BORROWING, CONVERSION AND CONTINUATION OF REVOLVING LOANS.

(a) Each Revolving Borrowing, each conversion of Revolving Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Company's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 10:00 a.m. three Business Days prior to the requested date of any borrowing of, conversion of or to or continuation of Eurodollar Rate Loans and (ii) 9:00 a.m. on the requested date of any borrowing of Base Rate Loans. Each telephonic notice by the Company pursuant to this Section 2.2(a) must be confirmed promptly by delivery to the Administrative Agent of a written Revolving Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Each borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a higher integral multiple of \$1,000,000. Except as provided in Sections 2.3(c) and 2.4(c), each borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a higher integral multiple of \$100,000. Each Revolving Loan Notice (whether telephonic or written) shall specify (i) whether the Company is requesting a Revolving Borrowing, a conversion of Revolving Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be borrowed, converted or continued, (iv) the Type of Revolving Loans to be borrowed or to which existing Revolving Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Company fails to specify a Type of Revolving Loan in a Revolving Loan Notice or if the Company fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Company requests a borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Revolving Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Revolving Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Revolving Loans, and if no timely notice of a continuation is provided by the Company, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base

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Rate Loans described in the preceding subsection. In the case of a Revolving Borrowing, each Lender shall make the amount of its Revolving Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 11:00 a.m. on the Business Day specified in the applicable Revolving Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.2 (and, if such Borrowing is the initial Credit Extension, Section 4.1), the Administrative Agent shall make all funds so received available to the Company in like funds as received by the Administrative Agent by crediting the account of the Company on the books of Bank of America with the amount of such funds in accordance with instructions provided by the Company to (and reasonably acceptable to) the Administrative Agent.

(c) During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Company and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. Each determination of an applicable Eurodollar Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Company and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Revolving Borrowings, all conversions of Revolving Loans from one Type to the other, and all continuations of Revolving Loans as the same Type, there shall not be more than seven Interest Periods in effect with respect to Revolving Loans.

2.3 LETTERS OF CREDIT.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.3, (1) from time to time on any Business Day during the Availability Period, to issue Letters of Credit for the account of the Company, and to amend or renew Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drafts under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Company; provided that the L/C Issuer shall not be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in, any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Total Outstandings would exceed the Aggregate Commitments or (y) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans would exceed the amount of such Lender's Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Company's ability to obtain Letters of Credit shall be fully revolving and, accordingly, the Company may,



during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) subject to Section 2.3(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless the Required Lenders have approved such expiry date;

(C) the expiry date of such requested Letter of Credit would occur more than one year after the scheduled Maturity Date, unless all Lenders have approved such expiry date;

(D) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer; or

(E) such Letter of Credit is in an initial amount less than \$100,000, in the case of a commercial Letter of Credit, or \$250,000, in the case of a standby Letter of Credit, or is to be denominated in a currency other than Dollars.

(iii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Company delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Company. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 10:00 a.m. at least two Business Days (or such later date and time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for the initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Company and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Company or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Company so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Company shall not be required to make a specific request to the L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not

require) the L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than one year following the Maturity Date; provided that the L/C Issuer shall not permit any such renewal if (A) the L/C Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.3(a)(ii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Nonrenewal Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such renewal or (2) from the Administrative Agent, any Lender or the Company that one or more of the applicable conditions specified in Section 4.2 is not then satisfied.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Company and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Company and the Administrative Agent of its receipt of such notice and the amount of the requested drawing. Not later than 9:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Company shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Company fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Pro Rata Share thereof. In such event, the Company shall be deemed to have requested a Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.2 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.2 (other than the delivery of a Revolving Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.3(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender (including the Lender acting as L/C Issuer) shall upon any notice pursuant to Section 2.3(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 11:00 a.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.3(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.2 cannot be satisfied or for any other reason, the Company shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.3(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.3.

(iv) Until each Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.3(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Revolving Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.3(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Company or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Lender's obligation to make Revolving Loans pursuant to this Section 2.3(c) is subject to the conditions set forth in Section 4.2 (other than delivery by the Company of a Revolving Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Company to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.3(c) by the time specified in Section 2.3(c)(ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.3(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed

Amount or interest thereon (whether directly from the Company or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.3(c)(i) is required to be returned under any of the circumstances described in Section 10.6 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(e) Role of L/C Issuer. Each Lender and the Company agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Company hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Company's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement, whether before or after any drawing by such beneficiary or transferee. None of the L/C Issuer, any Agent-Related Person, or any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.3(e); provided that anything in such clauses to the contrary notwithstanding, the Company may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Company, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Company which the Company proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(f) Obligations Absolute. The obligation of the Company to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

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

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Company may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company.

The Company shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Company's instructions or other irregularity, the Company will immediately notify the L/C Issuer. The Company shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(g) Cash Collateral. If, as of the Maturity Date, any Letter of Credit for any reason remains partially or wholly undrawn, the Company shall immediately Cash Collateralize all outstanding Letters of Credit in an amount equal to the undrawn amount of such Letters of Credit. For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the undrawn amount under a Letter of Credit, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have

corresponding meanings. The Company hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) Letter of Credit Fees. The Company shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share (i) a letter of credit fee for each commercial Letter of Credit equal to 1/8 of 1% per annum times the daily maximum amount available to be drawn under such Letter of Credit and (ii) a letter of credit fee for each standby Letter of Credit equal to the Applicable Rate times the daily maximum amount available to be drawn under such Letter of Credit; provided that, upon the request of the Required Lenders while any Event of Default exists, the rate per annum at which all Letter of Credit fees are calculated shall be increased by 2%. Such letter of credit fees shall be computed on a quarterly basis in arrears. Such letter of credit fees shall be due and payable (x) on the first Business Day of each January, April, July and October, commencing October 1, 2002 (or, if later, on the first such date to occur after the issuance of such Letter of Credit), (y) on the earlier of (i) the scheduled Maturity Date and (ii) the date on which the Obligations are accelerated pursuant to Section 8.2, and (z) thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily maximum amount of each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Company shall pay directly to the L/C Issuer for its own account such fronting fees with respect to Letters of Credit as specified in a separate fee letter between the Company and the L/C Issuer. In addition, the Company shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Company when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each commercial Letter of Credit.

(k) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

2.4 SWING LINE LOANS.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may (in its sole and absolute discretion) make a portion of the credit otherwise available to the Company under the Aggregate Commitments by making swing line loans (each such loan, a "Swing Line Loan") to the Company from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Pro Rata Share of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swing Line Lender may exceed the amount of such Lender's Commitment; provided that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Loans of any Lender, plus such Lender's Pro Rata Share of the Outstanding Amount of all L/C Obligations, plus such Lender's Pro Rata Share of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and provided, further, that the Company shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may, subject to the agreement of the Swing Line Lender, borrow under this Section 2.4, prepay under Section 2.5, and reborrow under this Section 2.4. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Loan, each conversion of a Swing Line Loan from one Type to the other, and each continuation of a Swing Line Loan as an IBOR Rate Loan shall be made upon the Company's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 10:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, converted or continued, which shall be a minimum of \$500,000, (ii) the Type of Swing Line Loan to be borrowed or which an existing Swing Line Loan is to be converted or continued, (iii) the requested borrowing, continuation or conversion date, which shall be a Business Day, and (iv) if applicable, the duration of the Interest Period with respect thereto. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. If the Company fails to specify a Type of Swing Line Loan in a Swing Line Loan Notice or if the Company fails to give a timely notice requesting a conversion or continuation, then the applicable Swing Line Loan shall be made as, or converted to, a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable IBOR Rate Loan. If the Company requests a borrowing of, conversion to, or continuation of IBOR Rate Loans in any such Swing Line Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period ending on the Business Day immediately following the first day of such Interest Period. Unless the Swing Line Lender has received notice (by



telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 11:00 a.m. on the date of a proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make the requested Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.4(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may (in its sole and absolute discretion), not later than 12:00 noon on the borrowing date specified in the applicable Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Company at its office by crediting the account of the Company on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.2, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.2. The Swing Line Lender shall furnish the Company with a copy of the applicable Revolving Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Revolving Loan Notice available to the Administrative Agent in immediately available funds for the account of the Swing Line Lender at the Administrative Agent's Office not later than 10:00 a.m. on the day specified in such Revolving Loan Notice, whereupon, subject to Section 2.4(c)(ii), each Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Company in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing, in accordance with Section 2.4(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.4(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.4(c) by the time specified in Section 2.4(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the

Federal Funds Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.4(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Lender's obligation to make Revolving Loans pursuant to this Section 2.4(c) is subject to the conditions set forth in Section 4.2. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

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

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

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Company for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.4 to refinance such Lender's Pro Rata Share of any Swing Line Loan, interest in respect of such Pro Rata Share shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Company shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.5 PREPAYMENTS.

(a) The Company may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part without premium or

penalty; provided that (i) such notice must be received by the Administrative Agent not later than 10:00 a.m. (A) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Revolving Loans to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.4. Each such prepayment shall be applied to the Revolving Loans of the Lenders in accordance with their respective Pro Rata Shares.

(b) The Company may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 10:00 a.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, the Company shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Company shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.5(c) unless after the prepayment in full of the Revolving Loans and Swing Line Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

2.6 TERMINATION OR REDUCTION OF COMMITMENTS. The Company may, upon notice to the Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 10:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Company shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, the Swing Line Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Pro Rata Share. All commitment fees accrued

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until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.7 REPAYMENT OF LOANS.

(a) The Company shall repay to the Lenders on the Maturity Date the aggregate principal amount of Revolving Loans outstanding on such date.

(b) The Company shall repay each Swing Line Loan on the Maturity Date.

2.8 INTEREST.

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan (including each applicable Swing Line Loan) shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate and (iii) each IBOR Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the IBOR Rate plus the Applicable Rate; provided that if the Swing Line Lender is deemed to have requested that each Lender fund its risk participation in any Swing Line Loan pursuant to Section 2.4(c)(ii), then commencing on the date of such deemed request, such Swing Line Loan shall bear interest at the Base Rate plus the Applicable Rate.

(b) If any amount payable by the Company under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Furthermore, upon the request of the Required Lenders while any Event of Default exists, the Company shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.9 FEES.

In addition to certain fees described in subsections (h) and (i) of Section 2.3:

(a) Commitment Fee. The Company shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of

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L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the first Business Day of each January, April, July and October, commencing on October 1, 2002, and on the Maturity Date. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. (i) The Company shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Company shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 COMPUTATION OF INTEREST AND FEES. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360 day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day.

2.11 EVIDENCE OF DEBT.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Company and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Company hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Company shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice

accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 PAYMENTS GENERALLY.

(a) All payments to be made by the Company shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Company hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 10:00 a.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 10:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Company shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Company or any Lender has notified the Administrative Agent prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Company or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Company or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

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

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Company to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the Federal Funds Rate from time to time in effect. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Revolving Loan included in the applicable Borrowing. If such Lender does not

pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Company, and the Company shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Company may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Company with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Company by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Revolving Loans and to fund participations in Letters of Credit and Swing Line Loans are several and not joint. The failure of any Lender to make any Revolving Loan or to fund any such participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 SHARING OF PAYMENTS. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Revolving Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Revolving Loans made by them and/or such subparticipations in the participations in L/C Obligations or Swing Line Loans held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Revolving Loans or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.6 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender

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in respect of the total amount so recovered, without further interest thereon. The Company agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.9) with respect to such participation as fully as if such Lender were the direct creditor of the Company in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

2.14 INCREASE IN COMMITMENTS.

(a) The Company may, from time to time on or prior to April \_\_, 2005, by means of a letter delivered to the Administrative Agent substantially in the form of Exhibit I, request that the Aggregate Commitments be increased to up to \$300,000,000; provided that (i) any such increase in the Aggregate Commitments shall be in a minimum amount of \$5,000,000 and a higher integral multiple thereof and (ii) the aggregate amount of all such increases shall not exceed \$50,000,000.

(b) Any increase in the Aggregate Commitments may be effected by (i) increasing the Commitment of one or more Lenders that have agreed to such increase and/or (ii) subject to clause (c), adding one or more commercial banks or other Persons as a party hereto (each an "Additional Lender") with a Commitment in an amount agreed to by any such Additional Lender.

(c) Any increase in the Aggregate Commitments pursuant to this Section 2.14 shall be effective three Business Days (or such other period agreed to by the Administrative Agent, the Company and, as applicable, each Lender that has agreed to increase its Commitment and each Additional Lender) after the later to occur of (i) the date on which the Company has delivered to the Administrative Agent a certified copy of resolutions of its board of directors, in form and substance reasonably acceptable to the Administrative Agent, authorizing such increase and (ii) the Administrative Agent has received and accepted the applicable increase letter in the form of Annex 1 to Exhibit I (in the case of an increase in the Commitment of an existing Lender) or assumption letter in the form of Annex 2 to Exhibit I (in the case of the addition of an Additional Lender).

(d) No Additional Lender shall be added as a party hereto without the written consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed), and no increase in the Aggregate Commitments may be effected pursuant to clause (b) above if a Default exists.

(e) The Administrative Agent shall promptly notify the Company and the Lenders of any increase in the amount of the Aggregate Commitments pursuant to this Section 2.14 and of the Commitment and Pro Rata Share of each Lender after giving effect thereto. The



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Company acknowledges that, in order to maintain Revolving Loans in accordance with each Lender's Pro Rata Share, a reallocation of the Commitments as a result of a non-pro-rata increase in the Aggregate Commitments may require prepayment or conversion of all or portions of certain Revolving Loans on the date of such increase (and any such prepayment or conversion shall be without premium or penalty but subject to the provisions of Section 3.4).

(f) This Section shall supersede any provision in Section 10.1 to the contrary.

ARTICLE III  
TAXES, YIELD PROTECTION AND ILLEGALITY

3.1 TAXES.

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

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

(c) If the Company shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to the Administrative Agent or any Lender, the Company shall also pay to the Administrative Agent or to such Lender, as the case may be, at the time interest is paid, such additional amount that the Administrative Agent or such Lender specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that the

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Administrative Agent or such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) The Company agrees to indemnify the Administrative Agent and each Lender for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section) paid by the Administrative Agent and such Lender, (ii) amounts payable under Section 3.1(c) and (iii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Payment under this subsection (d) shall be made within 30 days after the date the Lender or the Administrative Agent makes a demand therefor.

3.2 ILLEGALITY. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans or, in the case of the Swing Line Lender, IBOR Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate or, in the case of the Swing Line Lender, the IBOR Rate, then, on notice thereof by such Lender to the Company through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or IBOR Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans or IBOR Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Company shall, upon demand from such Lender (with a copy to the Administrative Agent), convert all Eurodollar Rate Loans or IBOR Rate Loans, as applicable, of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor or on such earlier date as such Lender may not lawfully continue to maintain such Eurodollar Rate Loans or IBOR Rate Loans, as applicable. Upon any such conversion, the Company shall also pay accrued interest on the amount so converted. Thereafter, for so long as such circumstances continue, all Loans which would otherwise be made or maintained by such Lender as Eurodollar Rate Loans or IBOR Rate Loans, as applicable, shall be Base Rate Loans. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.3 INCREASED COST AND REDUCED RETURN; CAPITAL ADEQUACY; RESERVES ON EURODOLLAR RATE LOANS.

(a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurodollar Rate Loans or IBOR Rate Loans or issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this subsection (a) any such increased costs or such reduction in amount resulting from (i) Taxes or Other Taxes (as to which Section 3.1 shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or has its Lending Office, and (iii) reserve requirements

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contemplated by Section 3.3(c)), then from time to time upon demand of such Lender (with a copy of such demand to the Administrative Agent), the Company shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or such reduction in amount.

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

(c) The Company shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan and, in the case of the Swing Line Lender, each IBOR Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least 15 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 15 days from receipt of such notice.

3.4 FUNDING LOSSES. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Company shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

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

(b) any failure by the Company (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert into any Eurodollar Rate Loan or IBOR Rate Loan on the date or in the amount notified by the Company;

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

For purposes of calculating amounts payable by the Company to the Lenders under this Section 3.4, each Lender shall be deemed to have funded each Eurodollar Rate Loan or IBOR Rate Loan made by it at the Eurodollar Rate or the IBOR Rate, as applicable, for such Loan by a matching

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deposit or other borrowing in the relevant offshore Dollar interbank market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan or IBOR Rate Loan was in fact so funded.

3.5 INABILITY TO DETERMINE RATES. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Company and each Lender. If the Swing Line Lender determines that for any reason adequate and reasonable means do not exist for determining the IBOR Rate for any requested Interest Period with respect to a proposed IBOR Rate Loan, or that the IBOR Rate for any requested Interest Period with respect to a proposed IBOR Rate Loan does not adequately and fairly reflect the cost to the Swing Line Lender of funding such Loan, the Administrative Agent will promptly so notify the Company. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans or the Swing Line Lender to make or maintain IBOR Rate Loans, as the case may be, shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders or the Swing Line Lender, as applicable) revokes such notice. Upon receipt of such notice, the Company may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or IBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Revolving Borrowing or a Swing Line Borrowing of Base Rate Loans in the amount specified therein.

3.6 MATTERS APPLICABLE TO ALL REQUESTS FOR COMPENSATION. A certificate of the Administrative Agent or any Lender claiming compensation under this Article III and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, the Administrative Agent or such Lender may use any reasonable averaging and attribution methods.

3.7 SURVIVAL. All of the Company's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV  
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

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

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Company;

(ii) a Note executed by the Company in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as an officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, validly existing and in good standing in the jurisdiction of its organization or formation;

(v) opinions of (x) Orrick, Herrington & Sutcliffe LLP, counsel to the Loan Parties, and (y) Harry H. Kahn, general counsel of the Loan Parties, substantially in the form of Exhibits G and H, respectively;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Company certifying (A) that the conditions specified in Sections 4.2(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) a calculation of the Leverage Ratio as of the last day of the fiscal quarter most recently ended prior to the Closing Date;

(viii) evidence that the Existing Credit Agreement has been or concurrently with the Closing Date is being terminated; and

(ix) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) Any fees required to be paid on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Company shall have paid all Attorney Costs of the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of Attorney Costs as shall constitute the Administrative

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Agent's reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

4.2 CONDITIONS TO ALL CREDIT EXTENSIONS.

The obligation of each Lender to honor any Request for Credit Extension (other than (i) a Revolving Loan Notice requesting only a conversion of Revolving Loans to the other Type or a continuation of Eurodollar Rate Loans or (ii) a Swing Line Notice requesting only a conversion of Swing Line Loans to the other Type or a continuation of Swing Line Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Company contained in Article V shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Default shall exist, or would result from such proposed Credit Extension.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

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

Each Request for Credit Extension (other than (i) a Revolving Loan Notice requesting only a conversion of Revolving Loans to the other Type or a continuation of Eurodollar Rate Loans or (ii) a Swing Line Notice requesting only a conversion of Swing Line Loans to the other Type or a continuation of Swing Line Loans) submitted by the Company shall be deemed to be a representation and warranty that the conditions specified in Sections 4.2(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES

The Company represents and warrants to the Administrative Agent and the Lenders that:

5.1 EXISTENCE, QUALIFICATION AND POWER; COMPLIANCE WITH LAWS. Each Loan Party (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its material assets and carry on its business substantially as now conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all

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

5.2 AUTHORIZATION; NO CONTRAVENTION. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, (i) any Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.3 THIRD PARTY AUTHORIZATION; OTHER CONSENTS. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of any Loan Document to which it is a party.

5.4 BINDING EFFECT.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party that is a party thereto, enforceable against such Loan Party in accordance with its terms.

5.5 LITIGATION. There is no action, suit, investigation or proceeding pending or threatened in any court or before any arbitrator or governmental authority that: (a) relates to the legality, validity or enforceability of any provision of any Loan Document or any of the transactions contemplated thereby, the rights or remedies of the Administrative Agent or any Lender thereunder, the legality or propriety of any action taken or proposed to be taken by the Administrative Agent or any Lender in connection therewith, or the power or authority of any Loan Party to perform its obligations thereunder, or (b) if adversely determined, would reasonably be expected to have a material adverse effect on the ability of any Loan Party to perform its obligations under or in connection with any Loan Document.

5.6 NO DEFAULT. Neither the Company nor any Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.7 ERISA COMPLIANCE.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Company, nothing has occurred which would prevent, or cause the loss of, such qualification. The Company and each ERISA Affiliate have made all

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required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

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

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

5.8 OWNERSHIP OF PROPERTY; LIENS. Each of the Company and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Company and its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.1.

5.9 TAXES. The Company and its Subsidiaries have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Company or any Subsidiary that would, if made, have a Material Adverse Effect.

5.10 FINANCIAL STATEMENTS; NO MATERIAL ADVERSE EFFECT.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, except as set forth on Schedule 5.10.



(b) The unaudited consolidated financial statements of the Company and its Subsidiaries dated January 31, 2003, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end adjustments; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, except as set forth on Schedule 5.10.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.11 ENVIRONMENTAL COMPLIANCE. The Company monitors in the ordinary course of business the effect of existing Environmental Laws and existing Environmental Claims on its business, operations and properties, and as a result thereof the Company has reasonably concluded that, except as specifically disclosed on Schedule 5.11, such Environmental Laws and Environmental Claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.12 INSURANCE. The properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or the applicable Subsidiary operates.

5.13 SUBSIDIARIES.

As of the Second Amendment Effective Date, the Company has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13 and has no equity investments in any other Person other than those specifically disclosed in Part (b) of Schedule 5.13.

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

(a) The Company is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of the Company, any Person Controlling the Company, or any Subsidiary (i) is a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 FULL DISCLOSURE. None of the representations or warranties made by the Company or any Subsidiary in the Loan Documents as of the date such representations and warranties are made or as of the date such representations and warranties are deemed made, and none of the statements contained in any exhibit, written report, written statement or certificate furnished by or on behalf of the Company or any Subsidiary in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of the Company to the Lenders prior to the Closing Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered (it being recognized by the Administrative Agent and the Lenders that all written financial projections with respect to the Company and its Subsidiaries that have been or may hereafter be delivered to the Administrative Agent and the Lenders have been or will be prepared in good faith based upon assumptions believed by the Company to be reasonable as of the date of the applicable projections).

5.16 COMPLIANCE WITH LAWS. Each of the Company and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 INTELLECTUAL PROPERTY; LICENSES, ETC. The Company and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Company, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Company or any Subsidiary infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Company, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 TAX SHELTER REGULATIONS. The Company does not intend to treat the Loans and/or the Letters of Credit and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). If the Company determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent thereof. If the Company so notifies the Administrative Agent, the Company acknowledges that one or more of the Lenders may treat its Revolving Loans and/or its interest in Swing Line Loans and/or Letters of Credit as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and such Lender or Lenders, as applicable, will maintain the lists and other records required by such Treasury Regulation.

ARTICLE VI  
AFFIRMATIVE COVENANTS

EXHIBIT 4.1

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Company shall, and shall (except in the case of the covenants set forth in Sections 6.1, 6.2, 6.3 and 6.11) cause each Subsidiary to:

6.1 FINANCIAL STATEMENTS. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year, a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and which report shall state that such financial statements present fairly the financial position of the Company and its Subsidiaries as of the date and for the period indicated in conformity with GAAP; and

(b) as soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year, a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Company as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.2(d), the Company shall not be separately required to furnish such information under subsection (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Company to furnish the information and materials described in subsection (a) and (b) above at the times specified therein.

6.2 CERTIFICATES; OTHER INFORMATION. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a certificate of its independent certified public accountants certifying such financial statements;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.1(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Company;

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

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

(e) promptly after the Company has notified the Administrative Agent of any intention by the Company to treat the Loans and/or the Letters of Credit and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form; and

(f) promptly, such additional information regarding the business, financial or corporate affairs of the Company or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.1(a) or (b) or Section 6.2(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto, on the Company's website on the Internet at the website address listed on Schedule 10.2 or (ii) on which such documents are posted on the Company's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and the Administrative Agent have access; provided that: (x) the Company shall deliver paper copies of such documents to the Administrative Agent and any Lender that requests the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Company shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Company shall be required to provide paper copies of the Compliance Certificates required by Section 6.2(b) to the Administrative Agent and each of the Lenders. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.3 NOTICES.

Promptly notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Company or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Company or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Company or any Subsidiary, including pursuant to any applicable Environmental Laws;
- (c) of the occurrence of any ERISA Event; and
- (d) of any material change in accounting policies or financial reporting practices by the Company or any Subsidiary.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the Company has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.4 PAYMENT OF OBLIGATIONS. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Company or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.5 PRESERVATION OF EXISTENCE, ETC. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization, except in a transaction permitted by Section 7.4 or 7.5; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.6 MAINTENANCE OF PROPERTIES. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.7 MAINTENANCE OF INSURANCE. Maintain with financially sound and reputable insurance companies not Affiliates of the Company, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons (it being understood that with respect to public liability and property damage coverage and workers' compensation coverage, the Company's self insurance plan as in effect on the date of this Agreement shall be deemed sufficient compliance with this Section).

6.8 COMPLIANCE WITH LAWS. Comply with the requirements of all Laws and all orders, writs, injunctions and decrees (including ERISA and Environmental Laws) applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.9 BOOKS AND RECORDS. Maintain proper books of record and account, in which full, true and correct entries sufficient to prepare financial statements in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Company or such Subsidiary, as the case may be.

6.10 INSPECTION RIGHTS. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; provided that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Company at any time during normal business hours and without advance notice.

6.11 USE OF PROCEEDS. Use the proceeds of the Credit Extensions for Permitted Acquisitions, working capital, capital expenditures and other general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 FURTHER ASSURANCES. Take such actions as are necessary, or as the Administrative Agent (or the Required Lenders acting through the Administrative Agent) may reasonably request from time to time, to ensure that the obligations of the Company hereunder and under the other Loan Documents are guaranteed at all times by Subsidiaries that, together with the Company, collectively (a) own assets which account for 90% or more of the consolidated assets of the Company and its Subsidiaries and (b) generate revenues which account for 90% or more of the consolidated revenues of the Company and its Subsidiaries during the most recently ended period of 12 consecutive months.

ARTICLE VII  
NEGATIVE COVENANTS

EXHIBIT 4.1

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Company shall not, nor shall it permit any Subsidiary to, directly or indirectly:

7.1 LIENS. Create, incur, assume or suffer to exist, any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Second Amendment Effective Date and listed on Schedule 7.1 and any renewals or extensions thereof; provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.5(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP; provided that no notice of lien has been filed or recorded under the Code;

(d) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations and other non-delinquent obligations of a like nature, in each case incurred in the ordinary course of business; provided that all such Liens in the aggregate would not (even if enforced) cause a Material Adverse Effect;

(g) customary Liens securing Surety Bonds;

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

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.1(h) or securing appeal or other surety bonds related to such judgments;

EXHIBIT 4.1

(j) Liens securing Indebtedness permitted under Section 7.5(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

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

(l) other Liens securing obligations in an aggregate amount not exceeding \$1,000,000 at any time outstanding.

7.2 DISPOSITIONS. Make any Disposition or enter into any agreement to make any Disposition, except:

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

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) subject to Section 6.12, Dispositions of property by the Company to any wholly-owned Subsidiary or by any Subsidiary to the Company or to a wholly-owned Subsidiary;

(e) Dispositions permitted by Section 7.3; and

(f) Dispositions not otherwise permitted hereunder which are made for fair market value; provided that (i) at the time of any such Disposition, no Default shall exist or result from such Disposition, (ii) at least 75% of the aggregate sales price from such Disposition shall be paid in cash and (iii) the aggregate value of all assets so sold by the Company and its Subsidiaries shall not exceed, in any fiscal year, 10% of Consolidated Net Worth as of the end of the preceding fiscal year.

7.3 FUNDAMENTAL CHANGES. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:



EXHIBIT 4.1

(a) any Subsidiary may merge with (i) the Company, provided that the Company shall be the continuing or surviving Person; or (ii) any one or more other Subsidiaries, provided, that when any wholly-owned Subsidiary is merging with another Subsidiary, a wholly-owned Subsidiary shall be the continuing or surviving Person; and

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to another Subsidiary; provided that if the transferor in such a transaction is a wholly-owned Subsidiary, then the transferee must either be the Company or a wholly-owned Subsidiary.

7.4 INVESTMENTS. Make any Investments, except:

(a) investments which, when made, constitute Permitted Investments;

(b) advances to officers, directors and employees of the Company and Subsidiaries in an aggregate amount not to exceed (i) \$1,000,000 at any time outstanding, for travel, entertainment and analogous ordinary business purposes and (ii) \$10,000,000 at any time outstanding for relocation purposes;

(c) Investments by the Company in any Subsidiary or by any Subsidiary in the Company or another Subsidiary;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.5;

(f) Investments made to consummate Permitted Acquisitions;

(g) Investments listed on Schedule 7.4; and

(h) other Investments not exceeding \$10,000,000 in the aggregate at any time outstanding.

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

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the Second Amendment Effective Date and listed on Schedule 7.5 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of the Company or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Company or any wholly-owned Subsidiary;

(d) obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Contract; provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness in respect of capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.1(i); provided that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed (i) \$15,000,000, in the case of capital leases and Synthetic Lease Obligations (collectively), and (ii) \$5,000,000, in the case of purchase money obligations; and

(f) unsecured Indebtedness in an aggregate principal amount not to exceed at any time outstanding 20% of Consolidated Net Worth as of the end of the preceding fiscal year; provided that the aggregate amount of all such Indebtedness which is not Permitted Long-Term Indebtedness shall not at any time exceed \$20,000,000.

7.6 USE OF PROCEEDS.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.7 RESTRICTED PAYMENTS. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to the Company and to wholly-owned Subsidiaries (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary, to the Company and any Subsidiary and to each other owner of capital stock or other equity interests of such Subsidiary on a pro rata basis based on their relative ownership interests; provided that no Restricted Payment shall be made by a non-wholly-owned Subsidiary which is a Guarantor at any time a Default exists);

(b) the Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person;

(c) the Company and each Subsidiary may (i) make Permitted Stock Repurchases and (ii) purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds

EXHIBIT 4.1

received from the substantially concurrent issue of new shares of its common stock or other common equity interests; and

(d) the Company may declare or pay ordinary cash dividends to its stockholders.

7.8 CHANGE IN NATURE OF BUSINESS. Engage in any material line of business substantially different from those lines of business conducted by the Company and its Subsidiaries on the Second Amendment Effective Date or any business substantially related or incidental thereto.

7.9 TRANSACTIONS WITH AFFILIATES. Enter into any transaction of any kind with any Affiliate of the Company, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Company or such Subsidiary as would be obtainable by the Company or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

7.10 SUBSIDIARY DIVIDENDS. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability of any Subsidiary to make Restricted Payments to the Company or any Guarantor or to otherwise transfer property to the Company or any Guarantor.

7.11 FINANCIAL COVENANTS.

(a) Consolidated Net Worth. Permit Consolidated Net Worth at any time to be less than the sum of (i) \$305,611,000, (ii) an amount equal to 50% of the Consolidated Net Income earned in each full fiscal quarter ending after the Second Amendment Effective Date (with no deduction for a net loss in any such fiscal quarter) and (iii) an amount equal to 100% of the aggregate increases in Shareholders' Equity of the Company and its Subsidiaries after the Second Amendment Effective Date by reason of the issuance and sale of capital stock or other equity interests of the Company or any Subsidiary including upon any conversion of debt securities of the Company into such capital stock or other equity interests.

(b) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio to be less than 1.50 to 1.0 at any time.

(c) Leverage Ratio. Permit the Leverage Ratio as of the end of any fiscal quarter to be greater than 2.50 to 1.0.

ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES

8.1 EVENTS OF DEFAULT. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Company or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within three Business Days after the same becomes due, any interest on any

EXHIBIT 4.1

Loan or on any L/C Obligation, or any commitment or other fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Company or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or

(c) Specific Covenants. The Company fails to perform or observe any term, covenant or agreement contained in any of Section 6.3(a) or 6.10 or Article VII; provided that, in the case of Section 7.9, such failure shall have continued for five Business Days; or

(d) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (c) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 20 days after the earlier of (i) the date on which a Responsible Officer knew or reasonably should have known of such failure and (ii) the date on which written notice thereof is given by the Administrative Agent or any Lender; or

(e) Cross-Default. (i) The Company or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) or Guarantee (other than any Surety Bond) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$10,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Company or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Company or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Company or such Subsidiary as a result thereof is greater than \$10,000,000; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any

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receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Company under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$1,000,000, or (ii) the Company or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$1,000,000; or

(h) Inability to Pay Debts; Attachment. (i) The Company or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 60 days after its issue or levy; or

(i) Judgments. There is entered against the Company or any Subsidiary (i) a final judgment or order for the payment of money in an aggregate amount exceeding \$10,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(j) Change of Control. There occurs any Change of Control with respect to the Company; or

(k) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document.

(l) Defaults with respect to Surety Bonds. (i) Any Person issuing Surety Bonds on behalf of the Company or any Subsidiary ceases for any reason to so issue Surety Bonds, the Company or the applicable Subsidiary fails to promptly procure another issuer for Surety Bonds and such cessation and failure could reasonably be expected to have a Material Adverse Effect; or (ii) the Company or any Subsidiary breaches or defaults on one or more contracts for which Surety Bonds have been issued in an aggregate amount of \$10,000,000 or

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more and the Person or Persons which issued such Surety Bonds either (x) take possession of the work under such bonded contracts and such taking of possession would reasonably be expected to have a Material Adverse Effect or (y) file any Uniform Commercial Code financing statement or similar document to perfect any Lien securing such bonded contracts, unless such filing is terminated within 10 days after such filing is made.

8.2 REMEDIES UPON EVENT OF DEFAULT. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company;

(c) require that the Company Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Company under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Company to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

ARTICLE IX  
ADMINISTRATIVE AGENT

9.1 APPOINTMENT AND AUTHORIZATION OF ADMINISTRATIVE AGENT.

(a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities

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shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in this Article IX and in the definition of "Agent-Related Person" included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

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

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

9.4 RELIANCE BY ADMINISTRATIVE AGENT.

(a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be

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genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

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

9.6 CREDIT DECISION; DISCLOSURE OF INFORMATION BY ADMINISTRATIVE AGENT. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon any Agent-Related



Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Company hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Company. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

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

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

9.9 SUCCESSOR ADMINISTRATIVE AGENT. The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders; provided that any such resignation by Bank of America shall also constitute its resignation as L/C Issuer and Swing Line Lender. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor administrative agent for the Lenders which successor administrative agent shall be consented to by the Company at all times other than during the existence of an Event of Default (which consent of the Company shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and the Company, a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent, L/C Issuer and Swing Line Lender and the respective terms "Administrative Agent," "L/C Issuer" and "Swing Line Lender" shall mean such successor administrative agent, Letter of Credit issuer and swing line lender, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated and the retiring L/C Issuer's and Swing Line Lender's rights, powers and duties as such shall be terminated, without any other or further act or deed on the part of such retiring L/C Issuer or Swing Line Lender or any other Lender, other than the obligation of the successor L/C Issuer to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or to make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX and Sections 10.4 and 10.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

9.10 ADMINISTRATIVE AGENT MAY FILE PROOFS OF CLAIM. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Company) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.3(i) and (j), 2.9 and 10.4) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.4.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.11 GUARANTY MATTERS. The Lenders irrevocably authorize the Administrative Agent to (and the Administrative Agent agrees that, so long as no Default exists or would result therefrom it will upon the request of the Company), release any Guarantor from its obligations under the Guaranty if (i) such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder or (ii) the Company delivers to the Administrative Agent a written request for the release of a Subsidiary from its obligations under the Guaranty; provided that prior to any such release the Administrative Agent shall have received a certificate from a Responsible Officer certifying that (a) the Company will be in compliance with Section 6.12 after giving effect to such release and (b) no Default exists or would result therefrom.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.11.

9.12 OTHER AGENTS. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent" or "documentation agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE X  
MISCELLANEOUS

10.1 AMENDMENTS, ETC. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Company or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Company or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific

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instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.1(a) without the written consent of each Lender;

(b) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.2) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.1) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary to waive any obligation of the Company to pay interest at the Default Rate;

(e) change Section 2.13 or Section 8.3 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(g) release all or substantially all of the Guarantors from the Guaranty without the written consent of each Lender;

and, provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

10.2 NOTICES AND OTHER COMMUNICATIONS; FACSIMILE COPIES.

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or (subject to subsection (c) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.2 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Company, the Administrative Agent, the L/C Issuer and the Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of subsection (c) below), when delivered; provided that notices and other communications to the Administrative Agent, the L/C Issuer and the Swing Line Lender pursuant to Article II shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all Loan Parties, the Administrative Agent and the Lenders. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(c) Limited Use of Electronic Mail. Electronic mail and Internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information as provided in Section 6.2, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

(d) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Revolving Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Company even if (i) such notices were not made in a manner specified herein, were incomplete

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or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.3 NO WAIVER; CUMULATIVE REMEDIES. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 ATTORNEY COSTS, EXPENSES AND TAXES. The Company agrees (a) to pay or reimburse the Administrative Agent for all costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, and (b) to pay or reimburse the Administrative Agent and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other out-of-pocket expenses incurred by the Administrative Agent and the cost of independent public accountants and other outside experts retained by the Administrative Agent or any Lender. All amounts due under this Section 10.4 shall be payable within ten Business Days after demand therefor. The agreements in this Section shall survive the termination of the Aggregate Commitments and repayment of all other Obligations.

10.5 INDEMNIFICATION BY THE COMPANY. Whether or not the transactions contemplated hereby are consummated, the Company shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C

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Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Company, any Subsidiary or any other Loan Party, or any Environmental Claim related in any way to the Company, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). All amounts due under this Section 10.5 shall be payable within ten Business Days after demand therefor. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.6 PAYMENTS SET ASIDE. To the extent that any payment by or on behalf of the Company is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

10.7 SUCCESSORS AND ASSIGNS.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Company may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with

the provisions of subsection (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) or (i) of this Section, or (iv) to an SPC in accordance with the provisions of subsection (h) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund (as defined in subsection (g) of this Section) with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consents (which consent of the Company shall not be unreasonably withheld or delayed); (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swing Line Loans; (iii) any assignment of a Commitment must be approved by the Administrative Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500. Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.1, 3.3, 3.4, 10.4 or 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Company (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 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 subsection (d) of this Section.



(c) The Administrative Agent, acting solely for this purpose as an agent of the Company, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption 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 and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Company, 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 Company and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, the Company or the Administrative Agent, sell participations to any Person (other than a natural person or the Company or any of the Company's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Company, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.1 that directly affects such Participant. Subject to subsection (e) of this Section, the Company agrees that each Participant shall be entitled to the benefits of Sections 3.1, 3.2 and 3.3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.9 as though it were a Lender; provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under Section 3.1 or 3.3 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.1 unless the Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Company, to comply with Section 10.13 as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) As used herein, the following terms have the following meanings:

"Eligible Assignee" means (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any other Person (other than a natural person) approved by (x) the Administrative Agent, the L/C Issuer and the Swing Line Lender, and (y) unless an Event of Default has occurred and is continuing, the Company (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, "Eligible Assignee" shall not include the Company or any of the Company's Affiliates or Subsidiaries

"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.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Company (an "SPC") the option to provide all or any part of any Revolving Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Revolving Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Revolving Loan, the Granting Lender shall be obligated to make such Revolving Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Company under this Agreement (including its obligations under Section 3.2), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Revolving Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Revolving Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Company and the Administrative Agent and with the payment of a processing fee of \$3,500, assign all or any portion of its right to receive payment with respect to any Revolving Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Revolving Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(i) Notwithstanding anything to the contrary contained herein, any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities, provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.7, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(j) Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days' notice to the Company and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Company, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Company shall be entitled to appoint from among the Lenders (subject to the consent by the applicable Lender to such appointment) a successor L/C Issuer or Swing Line Lender hereunder; provided that no failure by the Company to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights and obligations of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.3(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.4(c).

10.8 CONFIDENTIALITY. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedy hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Company and its obligations, (g) with the consent of the Company or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Company. For purposes of this Section, "Information" means all information received from any

Loan Party relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party, provided that, in the case of information received from a Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding anything herein to the contrary, "Information" shall not include, and the Administrative Agent and each Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided by, or for the benefit of, any Loan Party to the Administrative Agent or such Lender relating to such tax treatment and tax structure; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the Loans, the Letters of Credit and transactions contemplated hereby.

10.9 SET-OFF. In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender is authorized at any time and from time to time, without prior notice to the Company or any other Loan Party, any such notice being waived by the Company (on its own behalf and on behalf of each Loan Party) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness. Each Lender agrees promptly to notify the Company and the Administrative Agent after any such set-off and application made by such Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

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

equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

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

10.12 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.13 TAX FORMS. (a) (i) Each Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "Foreign Lender") shall deliver to the Administrative Agent, prior to receipt of any payment subject to withholding under the Code (or upon accepting an assignment of an interest herein), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Foreign Lender by the Company pursuant to this Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by the Company pursuant to this Agreement) or such other evidence satisfactory to the Company and the Administrative Agent that such Foreign Lender is entitled to an exemption from, or reduction of, U.S. withholding tax, including any exemption pursuant to Section 881(c) of the Code. Hereafter and from time to time, each such Foreign Lender shall (A) promptly submit to the Administrative Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to the Company and the Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by the Company pursuant to this Agreement, (B) promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of

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applicable Laws that the Company make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to the Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of the Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of IRS Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) The Company shall not be required to pay any additional amount to any Foreign Lender under Section 3.1 (A) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an IRS Form W-8IMY pursuant to this Section 10.13(a) or (B) if such Lender shall have failed to satisfy the foregoing provisions of this Section 10.13(a); provided that if such Lender shall have satisfied the requirement of this Section 10.13(a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this Section 10.13(a) shall relieve the Company of its obligation to pay any amounts pursuant to Section 3.1 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate.

(iv) The Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which the Company is not required to pay additional amounts under this Section 10.13(a).

(b) Upon the request of the Administrative Agent, each Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Administrative Agent two duly signed completed copies of IRS Form W-9. If such Lender fails to deliver such forms, then the Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction.

(c) If any Governmental Authority asserts that the Administrative Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify the

EXHIBIT 4.1

Administrative Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section, and costs and expenses (including Attorney Costs) of the Administrative Agent. The obligation of the Lenders under this Section shall survive the termination of the Aggregate Commitments, repayment of all other Obligations hereunder and the resignation of the Administrative Agent.

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

10.15 SEVERABILITY. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.16 AUTOMATIC DEBITS OF FEES. With respect to any interest, commitment fee, letter of credit fee or other fee due and payable to the Administrative Agent, the LC Issuer, the Swing Line Lender, Bank of America or the Arranger under the Loan Documents, the Company hereby irrevocably authorizes Bank of America to debit any deposit account of the Company with Bank of America in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount of the interest or fees then due, such debits will be reversed (in whole or in part, in Bank of America's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section shall be deemed a set-off.

10.17 GOVERNING LAW.

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

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SAN FRANCISCO OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE COMPANY, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE COMPANY, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS,

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WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE COMPANY, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

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



EXHIBIT 4.1

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

ABM INDUSTRIES INCORPORATED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BANK OF AMERICA, N.A., as a Lender, L/C  
Issuer and Swing Line Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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U.S. BANK NATIONAL ASSOCIATION, as  
Documentation Agent and as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

KEYBANK NATIONAL ASSOCIATION, as  
Syndication Agent and as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WACHOVIA BANK, NATIONAL  
ASSOCIATION, as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE BANK OF NEW YORK, as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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COMERICA BANK, as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

In connection with the Quarterly Report of ABM Industries Incorporated (the "Company") on Form 10-Q for the period ended April 30, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Henrik C. Slipsager, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 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 Company.

June 11, 2003

/s/ Henrik C. Slipsager

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Henrik C. Slipsager  
Chief Executive Officer  
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to ABM Industries Incorporated and will be retained by ABM Industries Incorporated 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

In connection with the Quarterly Report of ABM Industries Incorporated (the "Company") on Form 10-Q for the period ended April 30, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, George B. Sundby, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 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 Company.

June 11, 2003

/s/ George B. Sundby

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George B. Sundby  
Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to ABM Industries Incorporated and will be retained by ABM Industries Incorporated and furnished to the Securities and Exchange Commission or its staff upon request.

