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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-Q

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

For the quarterly period ended September 30, 2003

**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 1-6948

## SPX CORPORATION

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State of Incorporation)

**38-1016240**  
(I.R.S. Employer Identification No.)

**13515 Ballantyne Corporate Place, Charlotte, North Carolina 28277**  
(Address of Principal Executive Office)

**Registrant's Telephone Number including Area Code (704) 752-4400**

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

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

Common shares outstanding October 24, 2003 76,173,130

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## PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements

**SPX CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in millions)

	Unaudited September 30, 2003	December 31, 2002
<b>ASSETS</b>		
Current assets:		
Cash and equivalents	\$ 706.0	\$ 541.3
Accounts receivable, net	983.0	991.8
Inventories, net	663.1	605.0
Deferred income taxes	209.0	229.9
Other current assets	91.5	90.8
Assets of discontinued operations	—	263.3
<b>Total current assets</b>	<b>2,652.6</b>	<b>2,722.1</b>
Property, plant and equipment	1,304.4	1,260.8
Accumulated depreciation	(562.5)	(493.5)
<b>Net property, plant and equipment</b>	<b>741.9</b>	<b>767.3</b>
Goodwill	2,759.3	2,596.0
Intangible assets, net	581.0	530.4
Other assets	401.1	475.7
<b>Total assets</b>	<b>\$ 7,135.9</b>	<b>\$ 7,091.5</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 557.9	\$ 500.9
Accrued expenses	772.4	789.3
Short-term debt	266.2	251.4
Current maturities of long-term debt	36.4	28.9
Liabilities of discontinued operations	—	86.7
<b>Total current liabilities</b>	<b>1,632.9</b>	<b>1,657.2</b>
Long-term debt	2,460.0	2,414.6
Deferred income taxes	607.3	595.1
Other long-term liabilities	705.4	720.5
<b>Total long-term liabilities</b>	<b>3,772.7</b>	<b>3,730.2</b>
Minority interest	1.7	11.7
Shareholders' equity:		
Common stock	873.9	868.0
Paid-in capital	880.0	863.3
Retained earnings	615.4	478.2
Unearned compensation	(42.1)	(46.1)
Accumulated other comprehensive loss	(129.8)	(197.6)
Common stock in treasury	(468.8)	(273.4)
<b>Total shareholders' equity</b>	<b>1,728.6</b>	<b>1,692.4</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 7,135.9</b>	<b>\$ 7,091.5</b>

The accompanying notes are an integral part of these statements.

**SPX CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**Unaudited**  
**(in millions, except per share amounts)**

	Three months ended September 30,		Nine months ended September 30,	
	2003	2002	2003	2002
Revenues	\$ 1,241.9	\$ 1,233.3	\$ 3,628.5	\$ 3,506.6
Costs and expenses:				
Cost of products sold	864.2	848.4	2,532.8	2,369.5
Selling, general and administrative	214.4	215.6	678.1	645.2
Intangible amortization	2.6	2.0	7.2	5.3
Special charges	13.5	4.4	46.8	49.9
Operating income	147.2	162.9	363.6	436.7
Other income, net	4.6	4.6	5.4	4.4
Equity earnings in joint ventures	8.5	8.6	26.2	27.2
Interest expense, net	(45.2)	(48.8)	(136.0)	(124.1)
Income from continuing operations before income taxes	115.1	127.3	259.2	344.2
Provision for income taxes	(40.2)	(49.7)	(93.5)	(135.3)
Income from continuing operations before change in accounting principle	74.9	77.6	165.7	208.9
Loss from discontinued operations, net of tax	—	(1.8)	(28.6)	(9.7)
Change in accounting principle	—	—	—	(148.6)
Net income	\$ 74.9	\$ 75.8	\$ 137.1	\$ 50.6
Basic income (loss) per share of common stock				
Income from continuing operations before change in accounting principle	\$ 0.99	\$ 0.94	\$ 2.14	\$ 2.55
Loss from discontinued operations	—	(0.02)	(0.37)	(0.12)
Change in accounting principle	—	—	—	(1.81)
Net income per share	\$ 0.99	\$ 0.92	\$ 1.77	\$ 0.62
Weighted average number of common shares outstanding	75.601	81.968	77.593	81.954
Diluted income (loss) per share of common stock				
Income from continuing operations before change in accounting principle	\$ 0.98	\$ 0.93	\$ 2.12	\$ 2.49
Loss from discontinued operations	—	(0.02)	(0.37)	(0.12)
Change in accounting principle	—	—	—	(1.77)
Net income per share	\$ 0.98	\$ 0.91	\$ 1.75	\$ 0.60
Weighted average number of common shares outstanding	76.720	83.194	78.167	83.772

The accompanying notes are an integral part of these statements.

**SPX CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**Unaudited**  
**(in millions)**

	Nine months ended September 30,	
	2003	2002
<b>Cash flows from (used in) operating activities:</b>		
Net income	\$ 137.1	\$ 50.6
Loss from discontinued operations	28.6	9.7
Change in accounting principle	—	148.6
<b>Income from continuing operations before change in accounting principle</b>	<b>165.7</b>	<b>208.9</b>
Adjustments to reconcile income from continuing operations before change in accounting principle to net cash from operating activities		
Special and other charges	46.8	62.5
Deferred income taxes	37.2	90.4
Depreciation	84.4	80.3
Amortization of intangible and other assets	8.1	8.0
Amortization of discount on LYONs	15.1	17.0
Employee benefits	26.4	(1.4)
Other, net	18.2	5.8
Changes in operating assets and liabilities, net of effects from acquisitions and divestitures		
Accounts receivable and other	70.3	(2.2)
Inventories	(10.9)	(17.0)
Accounts payable, accrued expenses and other	(117.2)	(95.0)
Changes in working capital securitizations	2.0	(21.0)
Cash spending on restructuring actions	(49.3)	(61.3)
<b>Net cash from continuing operations</b>	<b>296.8</b>	<b>275.0</b>
Net cash from (used in) discontinued operations	9.7	(3.7)
<b>Net cash from operating activities</b>	<b>306.5</b>	<b>271.3</b>
<b>Cash flows from (used in) investing activities:</b>		
Proceeds from asset sales and business divestitures	232.7	29.3
Business acquisitions and investments, net of cash acquired	(189.2)	(148.4)
Capital expenditures	(54.2)	(60.8)
Other, net	—	(3.1)
<b>Net cash used in continuing operations</b>	<b>(10.7)</b>	<b>(183.0)</b>
Net cash used in discontinued operations	(0.5)	(8.9)
<b>Net cash used in investing activities</b>	<b>(11.2)</b>	<b>(191.9)</b>
<b>Cash flows from (used in) financing activities:</b>		
Borrowings under debt agreements	293.8	1,201.0
Payments under debt agreements	(248.4)	(1,430.5)
Purchases of common stock	(195.4)	(77.5)
Common stock issued under stock incentive programs	4.8	48.6
Common stock issued under exercise of stock warrants	—	24.2
Other, net	—	(20.1)
<b>Net cash used in continuing operations</b>	<b>(145.2)</b>	<b>(254.3)</b>
Net cash used in discontinued operations	—	(13.7)
<b>Net cash used in financing activities</b>	<b>(145.2)</b>	<b>(268.0)</b>
<b>Net increase (decrease) in cash and equivalents</b>	<b>150.1</b>	<b>(188.6)</b>
Consolidated cash and equivalents, beginning of period (includes \$14.6 and \$17.0 of cash and equivalents of discontinued operations, respectively)	555.9	460.0
<b>Consolidated cash and equivalents, end of period</b>	<b>\$ 706.0</b>	<b>\$ 271.4</b>

The accompanying notes are an integral part of these statements.

**SPX CORPORATION AND SUBSIDIARIES**  
**NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**September 30, 2003**  
**Unaudited**  
**(in millions, except per share and per LYON data)**

**(1) BASIS OF PRESENTATION**

In our opinion, the accompanying condensed consolidated balance sheets and related condensed consolidated statements of income and cash flows include the adjustments (consisting of normal and recurring items) necessary for their fair presentation in conformity with United States generally accepted accounting principles ("GAAP") and represent our accounts after the elimination of inter-company transactions. Investments in unconsolidated companies where we exercise significant influence are accounted for using the equity method. Preparing financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. Actual results could differ from these estimates.

Interim results are not necessarily indicative of results for a full year. The information included in this Form 10-Q should be read in conjunction with the consolidated financial statements contained in our 2002 Annual Report on Form 10-K, as amended. On April 7, 2003, we announced the sale of our Inrange Technologies Corporation subsidiary ("Inrange") and closed the sale on May 5, 2003 (see Note 4). The results of Inrange, which was part of our Technical Products and Services segment, are reported as discontinued operations in our condensed consolidated financial statements. Therefore, unless otherwise indicated, amounts provided in these notes pertain to continuing operations.

**(2) NEW ACCOUNTING PRONOUNCEMENTS**

The following is a summary of new accounting pronouncements that apply or may apply to our business.

In June 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 143, "Accounting for Asset Retirement Obligations." The provisions of SFAS No. 143 require that asset retirement obligations that are identifiable upon acquisition and construction and during the operating life of a long-lived asset be recorded as a liability using the present value of the estimated cash flows. A corresponding amount would be capitalized as part of the asset's carrying amount and amortized to expense over the asset's useful life. We have adopted the provisions of SFAS No. 143 effective January 1, 2003. The adoption of this statement has not had and is not expected to have a material impact on our financial position, results of operations or cash flows.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." The standard 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 product lines, plant closings or other exit or disposal activities. Previous accounting guidance was provided by Emerging Issues Task Force ("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 superseded EITF 94-3 and is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. We frequently engage in strategic restructuring and integration initiatives that include exit and disposal activities. Accordingly, the adoption of SFAS No. 146 has impacted the timing of recognition of certain restructuring costs however the effect of adoption has not had a material impact on our financial position, results of operations or cash flows.

In November 2002, the FASB issued Financial Interpretation ("FIN") No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." FIN 45 requires that a guarantor must recognize, at the inception of a guarantee, a liability for the fair value of the obligation that it has undertaken in issuing a guarantee. FIN 45 also addresses the disclosure requirements that a guarantor must include in its financial statements for guarantees issued, including matters such as commercial product warranties. The disclosure requirements in this interpretation are effective for financial statements for periods ending after December 15, 2002. The initial recognition and measurement provisions of this interpretation are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. We adopted the recognition provisions of FIN 45 effective January 1, 2003 for guarantees issued or modified after December 31, 2002. The adoption of FIN 45 did not have a material impact on our financial position, results of operations or cash flows. See Note 9 for our disclosure on product warranties.

In January 2003, the FASB issued FIN 46, "Consolidation of Variable Interest Entities," an interpretation of Accounting Research Bulletin 51, "Consolidated Financial Statements." FIN 46 requires that unconsolidated variable interest entities be consolidated by their primary beneficiaries. The provisions of FIN 46 are effective immediately for those variable interest entities created after January 31, 2003. The provisions, as amended, are effective for the first interim or annual period ending after December

15, 2003 for those variable interests held prior to February 1, 2003. Currently, we are still assessing the provisions of FIN 46; however we do not expect that adoption of FIN 46 will have a material impact on our financial position or results of operations.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends SFAS 133 "Accounting for Derivative Instruments and Hedging Activities" and SFAS No. 138 "Accounting for Certain Derivative Instruments and Certain Hedging Activities" and is related to certain derivatives embedded in other contracts and for hedging activities under SFAS 133. SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003 and is to be applied prospectively. SFAS No. 149 currently has not had an impact on our financial position, results of operations or cash flows.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity." SFAS No. 150 establishes standards for how companies classify and measure, in their statement of financial position, certain financial instruments with characteristics of both liabilities and equities. SFAS No. 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. SFAS No. 150 currently has not had an impact on our financial position, results of operations or cash flows.

### (3) STOCK BASED COMPENSATION

We account for our stock-based compensation under Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and accordingly no stock option expense is recognized. We adopted the disclosure provisions of SFAS No. 148, and the following table illustrates the pro forma effect on net income and income per share for the three and nine months ended September 30, 2003 and 2002 had the fair value recognition provisions of SFAS No. 123 been applied to stock-based employee compensation:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2002	2003	2002
Net income — as reported	\$ 74.9	\$ 75.8	\$ 137.1	\$ 50.6
Add: Stock-based employee compensation expense included in reported net income	1.4	1.4	4.0	1.4
Deduct: Total stock-based employee compensation expense determined under fair value based method, net of related tax effect				
Awards granted at market value	(9.5)	(9.9)	(30.5)	(29.9)
Awards granted above market value	(12.0)	(12.0)	(35.8)	(33.2)
Net income (loss) — pro forma	\$ 54.8	\$ 55.3	\$ 74.8	\$ (11.1)
Basic earnings (loss) per share of common stock:				
Income per share — as reported	\$ 0.99	\$ 0.92	\$ 1.77	\$ 0.62
Income (loss) per share — pro forma	\$ 0.72	\$ 0.67	\$ 0.96	\$ (0.14)
Diluted earnings (loss) per share of common stock:				
Income per share — as reported	\$ 0.98	\$ 0.91	\$ 1.75	\$ 0.62
Income (loss) per share — pro forma	\$ 0.71	\$ 0.66	\$ 0.96	\$ (0.13)
Basic earnings per share of common stock from continuing operations before change in accounting principle:				
Income per share — as reported	\$ 0.99	\$ 0.95	\$ 2.14	\$ 2.55
Income per share — pro forma	\$ 0.72	\$ 0.70	\$ 1.33	\$ 1.80
Diluted earnings per share of common stock from continuing operations before change in accounting principle:				
Income per share — as reported	\$ 0.98	\$ 0.93	\$ 2.12	\$ 2.49
Income per share — pro forma	\$ 0.71	\$ 0.69	\$ 1.32	\$ 1.76

### (4) ACQUISITIONS AND DIVESTITURES

We continually review each of our businesses pursuant to our "fix, sell or grow" strategy. We use acquisitions as a part of our strategy to acquire access to new technologies, expand our geographic reach, penetrate new markets and leverage our existing product, market, manufacturing or technical expertise. We also may look to sell current business assets if we determine they strategically fit

better with another company. Business acquisitions and dispositions for the nine months ended September 30, 2003 and 2002 are described below.

Business acquisitions have been accounted for using the purchase method of accounting and, accordingly, the condensed consolidated statements of income include the results of each acquired business since the date of acquisition. The assets acquired and liabilities assumed are recorded at preliminary estimates of fair values as determined by management based on information available. Final purchase price allocations are based on independent appraisals and management estimates. We finalize the allocation of purchase price to the fair value of the assets and liabilities assumed when we obtain information sufficient to complete the allocation and in all cases within one year after acquisition.

### **Acquisitions—2003**

During the first quarter, we completed four acquisitions in our Technical Products and Systems segment. Our security and building life-safety systems platform completed two acquisitions, IDenticard Systems, Inc. and Upper Valley Fire Protection Ltd., for an aggregate cash purchase price of \$52.8. The acquired companies had combined revenues of \$40.6 in the twelve months prior to the respective dates of acquisition. The broadcast and communications systems and services platform completed two acquisitions, Brookstone and Flash Technology, for an aggregate purchase price of \$62.1. The acquired companies had combined revenues of \$72.9 in the twelve months prior to the respective dates of acquisition.

During the first quarter, our specialty engineered products platform in the Industrial Products and Services segment completed one acquisition for a cash purchase price of \$3.2. The acquired company had revenues of \$15.7 in the twelve months prior to the date of acquisition.

During the first quarter, our fluid systems platform in the Flow Technology segment completed the acquisition of Hankison International (“Hankison”) for a cash purchase price of \$35.5. Hankison had revenues of \$64.2 in the twelve months prior to the date of acquisition.

During the second quarter, our specialty engineered products platform in the Industrial Products and Services segment completed the acquisition of GenMech Aerospace (“GenMech”) for a cash purchase price of \$15.4. GenMech had revenues of \$15.5 in the twelve months prior to the date of acquisition.

During the second quarter, our Service Solutions segment completed the acquisition of Kitba Consulting Services, L.P. (“Kitba”) for a cash purchase price of \$5.0. Kitba had revenues of \$10.0 in the twelve months prior to the date of acquisition.

During the third quarter, our specialty engineered products platform in the Industrial Products and Services segment completed the acquisition of BHS Torin, for a cash purchase price of \$3.4. BHS Torin had revenues of \$3.7 in the twelve months prior to the date of acquisition.

During the third quarter, our cooling technologies and services platform in the Flow Technology segment completed the acquisition of Rothemuhle, for a cash purchase price of \$4.9. Rothemuhle had revenues of \$20.0 in the twelve months prior to the date of acquisition.

These acquisitions are not material individually or in the aggregate.

### **Acquisitions—2002**

During the first quarter, we completed three acquisitions in our Technical Products and Systems segment, for cash with an aggregate purchase price of \$38.2. The acquired companies had aggregate revenues of \$46.3 in the twelve months prior to the respective dates of acquisition. These transactions include the acquisition of certain assets and liabilities of Dukane Communications Systems by our security and building life-safety systems platform.

During the first quarter, we completed one acquisition in the Industrial Products and Services segment, for a purchase price of \$13.4, which included the issuance of common stock valued at \$11.5. The acquired company had revenues of \$9.6 in the twelve months prior to the date of acquisition. The acquisition was made by our power systems platform.

During the second quarter, in the Technical Products segment, our security and building life-safety systems platform completed one acquisition for a purchase price of \$3.9, which included the issuance of common stock valued at \$2.9. The acquired company had revenues of \$3.0 in the twelve months prior to the date of acquisition.

During the second quarter, in the Flow Technology segment, our fluid systems platform completed the acquisition of Daniel Valve Company for a cash purchase price of \$72.0. Daniel Valve had revenues of \$46.7 in the twelve months prior to the date of acquisition.

During the third quarter, our cooling technologies and services platform in the Flow Technology segment completed the acquisition of certain assets and subsidiaries of the Balcke Cooling Products Group (“Balcke”) from Babcock Borsig AG for a net purchase price of approximately \$44.3, which included debt assumed. Of the purchase price, \$14.0 has not been paid as of September 30, 2003 and is being held in escrow pending the ultimate resolution of various purchase agreement matters. Balcke had revenues of approximately \$226.0 in the twelve months prior to the date of acquisition.

During the third quarter, in the Service Solutions segment, we completed one acquisition for a purchase price of \$5.0. The acquired company had revenues of \$4.8 in the twelve months prior to the date of acquisition.

These acquisitions were not material individually or in the aggregate.

### Discontinued Operations—2003

As part of our ongoing strategic review process, we evaluated several alternatives for our Inrange Technologies Corporation subsidiary, part of our Technical Products and Systems segment, and concluded that it was a better strategic fit with another company. Therefore, on April 7, 2003, we announced that we had signed a definitive agreement with Computer Network Technology Corporation (“CNT”) to sell our ownership of the outstanding shares of Inrange. On May 5, 2003, the sale of Inrange to CNT closed and our portion of the cash proceeds was \$148.5, after a \$24.5 settlement of an inter-company note payable by us to Inrange.

We have accounted for Inrange as a discontinued operation, in accordance with the provisions of SFAS No. 144, “Accounting for the Impairment and Disposal of Long-lived Assets.” The results of Inrange for all periods presented are included in the condensed consolidated financial statements as discontinued operations.

For the period from January 1, 2003 through May 5, 2003, total revenues and pre-tax loss from discontinued operations were \$48.3 and \$15.4, respectively. For the nine month period ended September 30, 2002, revenues and pre-tax loss from discontinued operations were \$167.6 and \$17.2, respectively. The total loss from discontinued operations, net of tax, for the nine months ended September 30, 2003 was \$28.6, which reflects a loss on the sale of Inrange of \$18.9.

The major classes of assets and liabilities of Inrange, included in the accompanying condensed consolidated balance sheet as of December 31, 2002 are shown below. The amounts below exclude inter-company balances and differ from Inrange’s publicly issued financial statements to conform to the presentation in our condensed consolidated balance sheet as of December 31, 2002.

#### Assets:

Cash and equivalents	\$ 14.6
Accounts receivable, net	61.5
Inventories, net	27.5
Other current assets	10.7
Net property, plant and equipment	16.7
Goodwill and intangibles, net	107.1
Other assets	25.2
	<hr/>
Assets of discontinued operations	\$263.3

#### Liabilities:

Accounts payable	\$ 14.4
Accrued expenses and other	35.2
Deferred income taxes	37.1
	<hr/>
Liabilities of discontinued operations	\$ 86.7

## (5) BUSINESS SEGMENT INFORMATION

We are a global provider of technical products and systems, industrial products and services, flow technology and service solutions. Our businesses are strategically organized by platform within each segment. Our products include fire detection and building life-safety products, TV and radio broadcast antennas and towers, life science products and services, power transformers, compaction equipment, high-tech die-castings, dock products and systems, cooling technologies and services, air filtration products,



valves, back-flow prevention and fluid handling equipment and metering and mixing solutions. Our products and services also include specialty service tools, diagnostic systems, service equipment and technical information services. Our products are used by a broad array of customers in various industries, including chemical processing, pharmaceuticals, infrastructure, mineral processing, petrochemical, telecommunications, transportation and power generation.

Our results of operations are reported in four segments: Technical Products and Systems, Industrial Products and Services, Flow Technology and Service Solutions. We have aggregated these operating segments in accordance with the criteria defined in SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." The primary aggregation factors considered in determining the segments were the nature of products sold, production processes and types of customers for these products. In determining our segments, we apply the threshold criteria of SFAS No. 131 to operating income or loss of each segment before considering special charges, including those recorded in cost of products sold. This is consistent with the way our chief operating decision maker evaluates the results of each segment.

#### *Technical Products and Systems*

The Technical Products and Systems segment focuses on solving customer problems with complete technology-based systems and services. Our emphasis is on growth through investment in new technology, new product introductions, alliances and acquisitions. The products and services offered by this segment are organized into the following strategic platforms: laboratory and life science products; security and building life-safety systems; broadcast and communication systems and services; and electrical test and measurement solutions.

#### *Industrial Products and Services*

The strategy of the Industrial Products and Services segment is to provide "Productivity Solutions for Industry." This segment emphasizes introducing new related services and products, as well as focusing on the replacement parts and service elements of the segment. The products and services offered by this segment are organized into the following strategic platforms: power systems; compaction equipment; and specialty engineered products.

#### *Flow Technology*

The Flow Technology segment designs, manufactures and markets solutions and products that are used to process or transport fluids and in heat transfer applications. The products and services offered by this segment are organized into the following strategic platforms: cooling technologies and services and fluid systems.

#### *Service Solutions*

Service Solutions designs, manufactures and markets a wide range of specialty service tools, hand-held diagnostic systems and service equipment, inspection gauging systems and technical and training information, primarily to the vehicle franchise dealer industry in North America and Europe. Major customers are franchised dealers of motor vehicle manufacturers, aftermarket vehicle service facilities and independent distributors. The products and services offered by this segment are organized into the following platform: diagnostics, specialty tools and service equipment, technical information and services.

Inter-company sales among segments are not significant. To be consistent with the reporting basis on which management internally evaluates segment performance, segment income excludes special charges, including those recorded in cost of products sold, and general corporate expenses. See Note 6 for more detail on special charges by segment. Financial data for our business segments is as follows:

	Three months ended September 30		Nine months ended September 30	
	2003	2002	2003	2002
<b>Revenues:</b>				
Technical Products and Systems	\$ 311.7	\$ 285.4	\$ 885.8	\$ 793.8
Industrial Products and Services	345.8	411.7	1,065.2	1,226.7
Flow Technology	386.5	370.1	1,120.1	966.5
Service Solutions	197.9	166.1	557.4	519.6
	<u>\$ 1,241.9</u>	<u>\$ 1,233.3</u>	<u>\$ 3,628.5</u>	<u>\$ 3,506.6</u>
<b>Segment Income:</b>				
Technical Products and Systems	\$ 54.6	\$ 61.1	\$ 138.9	\$ 153.6
Industrial Products and Services	36.7	57.0	108.7	184.7
Flow Technology	62.2	58.1	152.6	142.6
Service Solutions	24.6	18.5	63.2	60.4
	<u>178.1</u>	<u>194.7</u>	<u>463.4</u>	<u>541.3</u>
General Corporate	(17.4)	(14.8)	(53.0)	(42.1)
Special and Other Charges <sup>(1)</sup>	(13.5)	(17.0)	(46.8)	(62.5)
	<u>\$ 147.2</u>	<u>\$ 162.9</u>	<u>\$ 363.6</u>	<u>\$ 436.7</u>

<sup>(1)</sup> The three and nine month periods ended September 30, 2002 include \$12.6 of charges recorded in cost of products sold.

## (6) SPECIAL AND OTHER CHARGES

As part of our Value Improvement Process®, we right size and consolidate operations to drive results. Additionally, due to our acquisition strategy, from time to time we alter our business model to better serve customer demand, fix or discontinue lower-margin product lines and rationalize and consolidate manufacturing capacity. Our restructuring and integration decisions are based on discounted cash flows to achieve our goals of increased outsourcing, reduced structural footprint, and profitability in any economic environment. As a result of our strategic review process, we recorded special and other charges of \$46.8 and \$62.5 in the first nine months of 2003 and 2002, respectively. Of this charge, \$12.6 is recorded as a component of cost of products sold. These special charges were primarily for restructuring initiatives to consolidate manufacturing and sales facilities, reduce our work force and rationalize certain product lines.

The purpose of our restructuring initiatives is to improve profitability, streamline operations, reduce costs and improve efficiency. We estimate that we will achieve operating cost reductions in 2003 and beyond through reduced employee and manufacturing costs and other facility overhead reductions.

The components of the charges have been computed based on actual cash payouts, our estimate of the realizable value of the affected tangible and intangible assets, and estimated exit costs including severance and other employee benefits based on existing severance practices and local laws.

SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," 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 product lines, plant closing or other exit or disposal activities. SFAS No. 146 superseded EITF 94-3 and was applied prospectively to all exit or disposal activities initiated after December 31, 2002. We frequently engage in strategic restructuring and integration initiatives that include exit and disposal activities. Accordingly, the adoption SFAS No. 146 has impacted the timing of recognition of certain restructuring costs and is expected to have a similar impact on the timing of recognition of future restructuring costs.

We account for non-cash asset impairments in accordance with SFAS No. 144, "Accounting for the Impairment and Disposal of Long-Lived Assets." Typically, our non-cash asset impairments arise from business restructuring decisions that lead to the disposition of assets no longer required in the restructured business. For these situations, we recognize an impairment loss when the carrying amount of an asset exceeds the sum of the cash flows expected from the asset. Realization values for assets subject to impairment testing are primarily determined by third-party appraisals, quoted market prices or previous experience. If an impaired asset remains in service at the decision date, the remaining net book value is depreciated until the asset is no longer used in operating activities. When an impaired asset is removed from service, sale of the asset is probable, and the asset is made available for sale, depreciation of the asset is discontinued and the asset is recorded in other current assets as an asset held for sale.

Special and other charges for the three and nine month periods ended September 30, 2003 and 2002 include the following:

	Three months ended September 30		Nine months ended September 30	
	2003	2002	2003	2002
Employee Benefit Costs	\$ 6.5	\$ 4.5	\$ 23.4	\$ 26.3
Facility Consolidation Costs	0.9	(0.1)	3.8	7.1
Other Cash Costs	2.0	—	3.3	3.1
Non-Cash Asset Write-downs	4.1	12.6	16.3	26.0
<b>Total Special Charges</b>	<b>\$ 13.5</b>	<b>\$ 17.0</b>	<b>\$ 46.8</b>	<b>\$ 62.5</b>

At September 30, 2003, a total of \$29.9 of restructuring liabilities remained on the Condensed Consolidated Balance Sheet as shown below. With the exception of certain multi-year operating lease obligations at closed facilities and other contractual obligations, we anticipate that the liabilities related to restructuring actions will be paid within one year from the period in which the action was initiated. The following table summarizes the restructuring accrual activity from December 31, 2002 through September 30, 2003:

	Employee Benefit Costs	Facility Consolidation Costs	Other Cash Costs	Total Cash Costs	Non- cash Asset Write- downs	Total Special Charges
Balance at December 31, 2002	\$ 30.2	\$ 15.8	\$ 2.7	\$ 48.7		
Special Charges	23.7	4.0	3.3	31.0	\$ 16.3	\$ 47.3
Adjustments	(0.3)	(0.2)	—	(0.5)		(0.5)
Cash Payments	(36.4)	(10.2)	(2.4)	(49.3)		\$ 46.8
Balance at September 30, 2003	\$ 16.9	\$ 9.4	\$ 3.6	\$ 29.9		

### Special Charges—2003

In the third quarter of 2003, we recorded special charges of \$13.5, comprised of \$0.8 in the Technical Products and Systems segment, \$8.0 in the Industrial Products and Services segment, \$4.0 in the Flow Technology segment, and \$0.7 in the Service Solutions segment.

The charges recorded in the third quarter related primarily to employee benefit costs and asset impairments associated with new and previously announced facility consolidation actions and workforce reductions at many of our businesses, including our specialty engineered products, fluid systems, and laboratory and life sciences platforms. The new restructuring initiatives announced in the third quarter of 2003 will result in the termination of approximately 206 hourly and 65 salaried employees located in the United States, the United Kingdom and France, and the closure of a manufacturing facility in the United Kingdom.

Operating income for the nine months ended September 30, 2003 was reduced by \$46.8 of charges, primarily related to the actions described below.

In the Technical Products and Systems segment, we recorded \$14.0 of special charges for the nine months ended September 30, 2003 related primarily to employee benefit costs and asset impairments. In the second quarter our laboratory and life science products platform announced the closure of a manufacturing and administrative facility in Newtown, CT. The operations at this facility have been outsourced or consolidated into the platform's headquarters in Asheville, NC. As a result of the facility closure, we recorded impairment charges for certain machinery and equipment. We consolidated facilities and product lines at our broadcast and communication systems and services platform, which resulted in the closure of a manufacturing facility in Palmyra, MO. We also completed the closure of the Mahwah, NJ manufacturing facility at our electrical test and measurement solutions platform. In addition, we recorded charges at our security and building life safety systems platform for rightsizing actions that included a worldwide workforce reduction and the consolidation of an existing administrative facility in Falls Church, VA into a facility acquired with our acquisition of Vance International. These restructuring actions will result in the termination of approximately 363 hourly and 181 salaried employees located in the United States, Canada, the United Kingdom, and South Africa.

In the Industrial Products and Services segment, we recorded \$18.1 of special charges for the nine months ended September 30, 2003. These charges represent primarily employee benefit costs and asset impairments for initiatives taken to right size manufacturing and administrative operations and the exit of a product line at our specialty engineered products platform. In the second quarter, we formalized plans to consolidate and relocate to Mexico certain manufacturing operations of our dock products business by closing a manufacturing facility in Milwaukee, WI. As a result of the facility closure, we recorded impairment charges for certain plant and equipment that will not be used in the continuing operations. The closure and termination announcements to the impacted employees occurred in July 2003 and we have recognized the associated costs during the third quarter. In the third quarter, our hydraulic power tools unit announced the closure of a manufacturing facility in the United Kingdom with certain operations being outsourced or relocated to another facility. In addition, our power systems platform implemented a strategy to exit certain of its breaker repair and service operations which resulted in workforce reductions and the closure of three field service offices located in Rochester, NY, Cincinnati, OH, and Cleveland, OH. These restructuring actions will result in the termination of approximately 300 hourly and 112 salaried domestic employees.

In the Flow Technology segment, we recorded \$12.6 of special charges for the nine months ended September 30, 2003. Of these charges, \$4.8 relates to employee benefit and facility consolidation costs resulting from the implementation of our process equipment business consolidation strategy. This business consolidation resulted in workforce reductions, the closure of a manufacturing facility in Reading, PA, and the closure of an administrative office in Roselle, IL. In addition, facility consolidations at our cooling technologies and services and fluid systems platforms resulted in the closure of manufacturing facilities, located in Eloy, AZ and Ocala, FL, and sales and administrative offices, located in Santa Rosa, CA, Atlanta, GA and Philadelphia, PA. Other actions taken at our fluid systems platform were predominantly for the integration of existing air treatment operations into the recently acquired Hankison operations. In total, these restructuring and integration initiatives will result in the termination of approximately 157 hourly and 159 salaried domestic employees.

In the Service Solutions segment, we recorded \$2.1 of special charges for the nine months ended September 30, 2003. These charges relate primarily to as-incurred exit costs associated with the closure of our Montpelier, OH manufacturing facility. In addition, employee benefit costs were recorded for a workforce reduction at our technical information and services product line. This rightsizing action will result in the termination of approximately 12 hourly and 22 salaried employees in the United States, France, and the United Kingdom.

#### **Special and Other Charges—2002**

In the third quarter of 2002, we recorded \$17.0 of charges, of which \$12.6 was recorded as a component of cost of products sold. Excluding the charges recorded in cost of products sold, \$1.0 was recorded in the Technical Products and Systems segment, \$1.5 was recorded in the Industrial Products and Services segment, \$0.8 was recorded in the Flow Technology segment, and \$1.1 was recorded in the Service Solutions segment. Of the \$12.6 recorded in cost of products sold, \$3.1 was recorded in the Flow Technology segment and \$9.5 was recorded in the Service Solutions segment.

The charges recorded in the third quarter are primarily related to employee benefit costs for work force reductions at our dock products business and our hydraulic power tools business. In addition, the charges recorded in cost of products sold were associated with the realignment of certain inventory related primarily to market conditions, our decision to outsource non-core components, mechanical tool assemblies, and portions of our air conditioning product lines and the closure of a facility. The restructuring initiatives announced in the third quarter of 2002 resulted in the elimination of approximately 52 hourly and 26 salaried domestic employees.

Operating income for the nine months ended September 30, 2002 was reduced by charges of \$62.5 primarily related to the actions described below. Of this charge, \$12.6 is recorded as a component of cost of products sold.

In the Technical Products and Systems segment, \$2.4 of charges primarily related primarily to work force reduction costs at our lab and life sciences platform.

In the Industrial Products and Services segment, \$30.4 was recorded for the nine months ended September 30, 2002. These charges represented employee benefit costs, facility consolidation costs, and asset impairments and were primarily associated with the closure of the Milpitas, CA manufacturing facility at our power systems business, a restructuring action at our hydraulic power tools unit that resulted in the exiting of certain machining operations, and a work force reduction at our dock products business. These restructuring actions resulted in the elimination of approximately 374 hourly and 201 salaried domestic employees.

In the Flow Technology segment, \$9.3 of charges was recorded for the nine months ended September 30, 2002. Of these charges, \$6.2 related to employee benefit costs for work force reduction initiatives taken at our process and fluid handling business as well as facility consolidation costs for additional business consolidation actions taken by our valves and controls business. The actions taken at our valves and controls business were predominantly for the integration of existing valve businesses into our newly acquired Daniel Valve business. These restructuring and integration initiatives resulted in the termination of approximately 128 hourly and 38 salaried domestic employees. In addition, \$3.1 of this charge was recorded in cost of products sold for inventory disposed of as part of our decision to discontinue a product line.

In the Service Solutions segment, \$11.0 of charges was recorded for the nine months ended September 30, 2002. Of these charges, \$1.5 related to as-incurred exit costs associated with previously announced business integration actions as well as employee benefit costs for a work force reduction initiative that eliminated approximately 36 hourly domestic employees. Of this charge, \$9.5 was recorded in cost of products sold, which is associated with the realignment of certain inventory related primarily to market conditions, our decision to outsource non-core components, mechanical tool assemblies, and portions of our air conditioning product lines and the closure of a facility.

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The Corporate special charges for the nine months ended September 30, 2002 of \$9.4 related to the final costs to complete the relocation of our corporate headquarters to Charlotte, NC, and the impairment of a corporate asset.

**(7) INVENTORY**

Inventory consists of the following amounts (reduced when necessary to estimated realizable values):

	September 30, 2003	December 31, 2002
Finished goods	\$ 301.0	\$ 311.9
Work in process	141.0	105.2
Raw material and purchased parts	232.9	201.0
<b>Total FIFO cost</b>	<b>\$ 674.9</b>	<b>\$ 618.1</b>
Excess of FIFO cost over LIFO inventory value	(11.8)	(13.1)
<b>Total inventory</b>	<b>\$ 663.1</b>	<b>\$ 605.0</b>

**(8) GOODWILL AND OTHER INTANGIBLE ASSETS**

The following tables reflect goodwill and intangible assets as of December 31, 2002. Thereafter, activity reflects the initial allocation of purchase price for acquisitions completed in the first nine months of 2003, subsequent purchase price adjustments for acquisitions completed not more than one year prior to the date of adjustment, currency translation adjustments and amortization. This information is presented first on a consolidated basis and second on a segment basis.

*Consolidated:*

	Unamortized		Amortized			Total
	Goodwill	Trademarks/ Tradenames	Patents	Licenses	Other	
Weighted average useful life in years			8	11	5	
December 31, 2002 gross balance	\$2,596.0	\$ 479.8	\$ 48.4	\$ 1.7	\$10.8	\$3,136.7
Acquisitions, related adjustments, and currency translation	163.3	49.2	3.6	0.2	4.8	221.1
September 30, 2003 gross balance	\$2,759.3	\$ 529.0	\$ 52.0	\$ 1.9	\$15.6	\$3,357.8
December 31, 2002 accumulated amortization			\$ (7.8)	\$ (0.6)	\$ (1.9)	\$ (10.3)
Amortization			(4.6)	(0.4)	(2.2)	(7.2)
September 30, 2003 accumulated amortization			\$ (12.4)	\$ (1.0)	\$ (4.1)	\$ (17.5)

Estimated amortization expense:

For year ended 2003	\$ 9.9
For year ended 2004	\$10.0
For year ended 2005	\$ 9.2
For year ended 2006	\$ 7.7
For year ended 2007	\$ 6.1

Segments:

	Unamortized		Amortized			Total
	Goodwill	Trademarks/ Tradenames	Patents	Licenses	Other	
<b>Technical Products and Systems</b>						
December 31, 2002 gross balance	\$ 620.6	\$ 85.3	\$ 18.0	\$ 1.6	\$ 5.9	\$ 731.4
Acquisitions, related adjustments, and currency translation	81.8	10.5	0.5	0.2	0.3	93.3
September 30, 2003 gross balance	\$ 702.4	\$ 95.8	\$ 18.5	\$ 1.8	\$ 6.2	\$ 824.7
December 31, 2002 accumulated amortization			\$ (3.3)	\$ (0.6)	\$ (0.4)	\$ (4.3)
Amortization			(1.9)	(0.3)	(0.8)	(3.0)
September 30, 2003 accumulated amortization			\$ (5.2)	\$ (0.9)	\$ (1.2)	\$ (7.3)
<b>Industrial Products and Services</b>						
December 31, 2002 gross balance	\$ 790.1	\$ 155.5	\$ 13.9	\$ 0.1	\$ 4.1	\$ 963.7
Acquisitions, related adjustments, and currency translation	20.4	21.3	1.6	—	4.4	47.7
September 30, 2003 gross balance	\$ 810.5	\$ 176.8	\$ 15.5	\$ 0.1	\$ 8.5	\$ 1,011.4
December 31, 2002 accumulated amortization			\$ (2.1)	\$ —	\$ (1.2)	\$ (3.3)
Amortization			(0.9)	(0.1)	(1.1)	(2.1)
September 30, 2003 accumulated amortization			\$ (3.0)	\$ (0.1)	\$ (2.3)	\$ (5.4)
<b>Flow Technology</b>						
December 31, 2002 gross balance	\$ 897.8	\$ 188.5	\$ 15.4	\$ —	\$ 0.8	\$ 1,102.5
Acquisitions, related adjustments, and currency translation	56.4	17.2	1.5	—	0.1	75.2
September 30, 2003 gross balance	\$ 954.2	\$ 205.7	\$ 16.9	\$ —	\$ 0.9	\$ 1,177.7
December 31, 2002 accumulated amortization			\$ (1.9)	\$ —	\$ (0.3)	\$ (2.2)
Amortization			(1.7)	—	(0.3)	(2.0)
September 30, 2003 accumulated amortization			\$ (3.6)	\$ —	\$ (0.6)	\$ (4.2)
<b>Service Solutions</b>						
December 31, 2002 gross balance	\$ 287.5	\$ 50.5	\$ 1.1	\$ —	\$ —	\$ 339.1
Acquisitions, related adjustments, and currency translation	4.7	0.2	—	—	—	4.9
September 30, 2003 gross balance	\$ 292.2	\$ 50.7	\$ 1.1	\$ —	\$ —	\$ 344.0
December 31, 2002 accumulated amortization			\$ (0.5)	\$ —	\$ —	\$ (0.5)
Amortization			(0.1)	—	—	(0.1)
September 30, 2003 accumulated amortization			\$ (0.6)	\$ —	\$ —	\$ (0.6)

In accordance with our policy, we conduct our annual impairment testing of goodwill and indefinite-lived intangibles in connection with our long-range forecasting process which will take place in the fourth quarter of this year. In addition, goodwill and indefinite-lived intangibles are reviewed for impairment more frequently if impairment indicators arise. Intangible assets that are subject to amortization are reviewed for impairment in accordance with the provisions of SFAS No. 144.

In accordance with the adoption of the provisions of SFAS No. 142, "Goodwill and Other Intangible Assets", we were required to test all existing goodwill for impairment as of January 1, 2002 on a reporting unit basis. Step 1 of this test involved comparing the carrying values of the reported net assets of our reporting units to their fair values. Fair value was based on discounted cash flow projections, but we also considered factors such as market capitalization and comparable industry price multiples. The net assets of our automotive filtration systems unit and hydraulic power tools unit, both in our Industrial Products and Services segment, had carrying values in excess of their fair values. For these reporting units, we performed Step 2 of the impairment testing provisions.

We engaged an independent valuation and appraisal firm to assist us with the Step 2 testing. The assets and liabilities of our automotive filtration systems unit and our hydraulic power tools unit were appraised at their current fair value to calculate implied goodwill for these reporting units. The recorded goodwill exceeded the implied goodwill by \$148.6, and, accordingly, this amount was required to be written-off as a transition impairment charge and was recorded as a change in accounting principle. The impaired goodwill was not deductible for income tax purposes.

## (9) WARRANTY

In the normal course of business, we issue product warranties for specific product lines and provide for the estimated future warranty cost in the period in which the sale is recorded. We provide for the estimated warranty cost based on contract terms and historical experience. Because warranty estimates are forecasts that are based on the best available information, actual warranty costs may differ from these estimates. In addition, due to the seasonal fluctuations at certain of our businesses the timing of warranty provisions and the usage of warranty accruals can vary period to period. Adjustments to initial obligations for warranties are made as changes in the obligations can be estimated. The following is an analysis of our product warranty accrual from December 31, 2002 through September 30, 2003:

Balance as of December 31, 2002	\$ 61.4
Acquisitions	9.5
Provisions	24.1
Usage	(24.5)
	<hr/>
Balance as of September 30, 2003	\$ 70.5
	<hr/>

## (10) INDEBTEDNESS

	September 30, 2003	December 31, 2002
Tranche A loan	\$ 219.4	\$ 225.0
Tranche B loan	1,090.9	410.3
Tranche C loan	—	683.7
LYONs, net of unamortized discount of \$386.0 and \$551.6, respectively	636.4	858.2
7.5% senior notes	500.0	500.0
6.25% senior notes	300.0	—
Other borrowings	15.9	17.7
	<hr/>	<hr/>
	\$ 2,762.6	\$ 2,694.9
Less: short-term debt	(266.2)	(251.4)
Less: current maturities of long-term debt	(36.4)	(28.9)
	<hr/>	<hr/>
Total long-term debt	\$ 2,460.0	\$ 2,414.6
	<hr/>	<hr/>

Under our credit facility, aggregate maturities of the term loans are \$33.6 in 2004, \$44.8 in 2005, \$56.1 in 2006, \$61.7 in 2007, \$324.2 in 2008 and \$778.8 in 2009. Although no amounts are borrowed under our revolving credit loans at September 30, 2003, any future borrowings under these loans would mature in 2008, when the facility expires, but could be repaid at any time before 2008. Other borrowings are primarily property mortgages and revolving lines of credit at foreign locations that are refinanced as they come due and therefore, are classified as long-term.

### Credit Facility

In August 2003, we refinanced our credit facility by combining the existing Tranche C term loan into the Tranche B term loan. The purpose of this refinancing was to reduce the applicable rate on the Tranche C borrowings and to amend certain covenants including, but not limited to, increased flexibility with respect to dividend payment and stock repurchases. The new combined Tranche B term loan matures in September 2009.

Under our credit facility, the term loans bear interest, at our option, at LIBOR plus the Applicable Rate or the ABR plus the Applicable Rate. During the first nine months of 2003, interest on the term loans was calculated using LIBOR and we intend to select LIBOR as the borrowing rate in the future. The Applicable Rate for the revolving loans and Tranche A term loan is based upon the Consolidated Leverage Ratio as defined in the credit facility. The Applicable Rate is as follows:

	LIBOR based borrowings	ABR based borrowings
Tranche A term loans and revolving loans	Between 1.75% and 2.25%	Between 0.75% and 1.25%
Tranche B term loans	2.25%	1.25%



Our \$500.0 of revolving loans available under the credit facility is also subject to annual commitment fees between 0.25% and 0.5% on the unused portion of the loans. At September 30, 2003, no amounts were borrowed against the \$500.0 revolving loans; however, the aggregate available borrowing capacity was reduced by \$146.9 of letters of credit outstanding.

The credit facility is secured by a pledge of 100% of the stock of substantially all of our domestic subsidiaries and 66% of the stock in our foreign subsidiaries and a security interest in substantially all of our assets and all of the assets of our wholly owned domestic subsidiaries (excluding our interest in the EGS joint venture).

The credit facility contains covenants, the most restrictive of which are two financial condition covenants. The first financial condition covenant does not permit the Consolidated Leverage Ratio (as defined in the credit facility) on the last day of any period of four consecutive fiscal quarters to exceed 3.25 to 1.00. The second financial condition covenant does not permit the Consolidated Interest Coverage Ratio (as defined in the credit facility) for any period of four consecutive fiscal quarters to be less than 3.50 to 1.00. For the quarter ended September 30, 2003, our Consolidated Leverage Ratio was 2.64 to 1.00 and our Consolidated Interest Coverage Ratio was 5.83 to 1.00.

The credit facility also includes covenant provisions regarding, among other things, indebtedness, liens, investments, guarantees, acquisitions, dispositions, sales and leaseback transactions, restricted payments and transactions with affiliates. Based on available information, we do not expect these covenants to restrict our liquidity, financial condition or access to capital resources in the foreseeable future. Under the credit facility covenants, our ability to pay cash dividends in a fiscal year is limited to \$75.0 plus an amount equal to 50% of Consolidated Net Income (as defined in the covenants) for the immediate preceding fiscal year. In addition, our credit facility contains the following covenants regarding our ability to repurchase shares of our common stock; (1) if our consolidated leverage ratio (as defined in the credit facility) is greater than 3.0, our share repurchase capacity is limited to \$100.0, (2) if our consolidated leverage ratio is between 3.0 and 2.0, our share repurchase capacity is limited to \$200.0 plus an amount equal to 50% of consolidated net income from October 1, 2002 to the end of the most recent fiscal period, less any cash dividends paid in excess of \$75.0 and (3) if our consolidated leverage ratio is less than 2.0, our share repurchase capacity is unlimited. We have not paid cash dividends in 2002 or 2003. See note 12 for more specific information on share repurchases.

We are permitted to prepay the Tranche A and Tranche B term loans in whole or in part at any time without penalty or premium. We are not allowed to reborrow any amounts that we repay on the Tranche A or Tranche B term loans.

The final maturity for each loan is as follows:

	<u>Date of Final Maturity</u>
Revolving loans	March 31, 2008
Tranche A term loans	March 31, 2008
Tranche B term loans	September 30, 2009

The credit facility also requires scheduled principal payments of the term loans and mandatory prepayments from net proceeds arising in connection with certain asset sales or dispositions and issuances of subordinated debt under certain circumstances.

The revolving loans may be borrowed, prepaid and reborrowed. Letters of credit and swing line loans are also available under the revolving credit facility. The facility provides for the issuance of letters of credit in U.S. Dollars, Euros, and Pounds Sterling at any time during the revolving availability period, in an aggregate amount not exceeding \$250.0. Letters of credit issued under this facility reduce the aggregate amount available under the revolving loan commitment.

#### **Liquid Yield Option Notes**

On February 6, 2001, we issued Liquid Yield Option(TM) Notes ("February LYONs") at an original price of \$579.12 per \$1,000 principal amount at maturity, which represents an aggregate initial issue price of \$576.1 and an aggregate principal amount of \$994.8 due at maturity on February 6, 2021. On May 9, 2001, we issued Liquid Yield Option (TM) Notes ("May LYONs") at an original price of \$579.12 per \$1,000 principal amount at maturity, which represents an aggregate initial issue price including the over allotment exercised by the original purchaser of \$240.3 and an aggregate principal amount of \$415.0 due at maturity on May 9, 2021.

We may redeem all or a portion of the February LYONs for cash at any time on or after February 6, 2006 at predetermined redemption prices. February LYONs holders may require us to purchase all or a portion of their LYONs on February 6, 2004 for \$628.57 per LYON, February 6, 2006 for \$663.86 per LYON, or February 6, 2011 for \$761.00 per LYON. We may redeem all or a portion of the May LYONs for cash at any time on or after May 9, 2005. May LYONs holders may require us to purchase all or a

portion of their LYONs on May 9, 2005 for \$645.97 per LYON or May 9, 2009 for \$720.55 per LYON. For either the February LYONs or May LYONs, we have the option to pay the purchase price in cash, shares of common stock or a combination of cash and common stock.

On May 9, 2003, 0.387 of the May LYONs were put to us and settled in cash for \$236.9, their accreted value as of May 9, 2003. The 0.028 May LYONs that remain outstanding subsequent to the put have an accreted value of \$17.1 at September 30, 2003 and are classified as long-term debt. Due to the settlement, we were subject to tax recapture on the majority of the May LYONs interest deduction. This resulted in an income tax payment of \$11.6, which we paid in the third quarter of 2003.

SFAS No. 78, "Classification of Obligations That are Callable by the Creditor," requires that obligations, that are by their terms, due upon demand within one year of the balance sheet date, should be considered short-term obligations. The February LYONs have a put option date within twelve months of September 30, 2003. Therefore, of the \$619.3 total accreted value of the February LYONs at September 30, 2003, we have classified \$266.2 as short-term debt. We have classified \$353.1 as long-term debt as we have the ability and intent at September 30, 2003, through the availability of our revolving loans, to refinance the amount of any February LYONs that may be put to us. The next put date for the May LYONs is May 9, 2005 and therefore all May LYONs outstanding at September 30, 2003 are classified as long-term debt. In addition to using our revolving loans for the February LYONs classified as long-term debt, we may use cash, the trade receivable financing agreement that we entered into in April 2003, or other capital market refinancings to fund the short-term portion of these obligations if they are put to us or reach maturity.

The LYONs have a yield to maturity of 2.75% per year, computed on a semi-annual bond equivalent basis, calculated from the date of issuance. We will not pay cash interest on the LYONs prior to maturity unless contingent interest becomes payable. The LYONs are unsecured and unsubordinated obligations and are debt instruments subject to United States federal income tax contingent payment debt regulations. Even if we do not pay any cash interest on the LYONs, bondholders are required to include interest in their gross income for United States federal income tax purposes. This imputed interest, also referred to as tax original issue discount, accrues at a rate equal to 9.625% on the February LYONs and 8.75% on the May LYONs. The rate at which the tax original issue discount accrues for United States federal income tax purposes exceeds the stated yield of 2.75% for the accrued original issue discount. In the event that any of the February LYONs or May LYONs are put to the company or redeemed by the company, the respective imputed interest deduction less the original issue discount of 2.75% would be recaptured at the time of the put or redemption. As a result of the put on May 9, 2003, we were subject to \$11.6 of tax recapture on the May LYONs. For the February LYONs, the amount of the total recapture calculated on the first put date would be approximately \$54.8 on February 6, 2004.

The LYONs are subject to conversion to shares of our common stock only if certain contingencies are met. These contingencies include:

- (1) Our average stock price exceeding predetermined accreted values of our stock price each quarter (see below);
- (2) During any period in which the credit rating assigned to the LYONs by either Moody's or Standard & Poor's is at or below a specified level;
- (3) Upon the occurrence of certain corporate transactions, including a change in control.

In addition, a holder may surrender for conversion, at the accreted value, a LYON for redemption even if it is not otherwise convertible at such time.

The conversion rights based on predetermined accretive values of our stock include, but are not limited to, the following provisions:

	February LYONs	May LYONs
Initial Conversion Rate (shares of common stock per LYON)	9.6232	8.8588
Initial Stock Price	\$ 50.15	\$ 55.40
Initial Accretion Percentage	135%	120%
Accretion Percentage Decline Per Quarter	0.3125%	0.125%
Conversion Trigger Prices—For the Next Twelve Months:		
2003 Fourth Quarter	\$ 85.33	\$ 82.97
2004 First Quarter	\$ 85.71	\$ 83.45
2004 Second Quarter	\$ 86.09	\$ 83.93
2004 Third Quarter	\$ 86.98	\$ 84.42

Holders may surrender LYONs for conversion into shares of common stock in any calendar quarter, if, as of the last day of the preceding calendar quarter, the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive

trading days ending on the last trading day of such preceding calendar quarter is more than the specified percentage beginning at 135% and declining 0.3125% per quarter thereafter for the February LYONs, beginning at 120% and declining 0.125% per quarter thereafter for the May LYONs of the accreted conversion price per share of common stock on the last trading day of such preceding calendar quarter. The accreted conversion price per share as of any day will equal the issue price of a LYON plus the accrued original issue discount to that day, divided by the number of shares of common stock issuable upon conversion of a LYON on that day.

Under GAAP, the LYONs are not included in the diluted income per share of common stock calculation unless a LYON is expected to be converted for stock or one of the three contingent conversion tests summarized above are met. If the LYONs were to be put, we expect to settle them for cash and none of the contingent conversion tests have been met, accordingly, they are not included in the diluted income per share of common stock calculation. If converted as of September 30, 2003, the February LYONs and May LYONs would be exchanged for a total of 9.8 million shares of our common stock. If the LYONs had been converted as of January 1, 2003, diluted income per share of common stock from continuing operations would have been \$0.91 and \$2.01 for the three and nine-month periods ended September 30, 2003.

#### **Senior Notes**

In June 2003, we issued \$300.0 of 6.25% senior notes pursuant to our universal shelf registration statement. These notes mature on June 15, 2011. In December 2002, we issued \$500.0 of 7.5% senior notes pursuant to our universal shelf registration statement. These notes mature on January 1, 2013. Both of these note issuances are unsecured and rank equally with all of our existing and future unsecured senior indebtedness, but are effectively junior to our senior secured debt and obligations of our subsidiaries.

The indentures governing the notes contain a number of covenants that limit our ability and the ability of our subsidiaries, to incur additional debt, pay dividends and repurchase stock, make other restricted payments, including, without limitation, investments, create liens, enter into sale leaseback transactions, enter into agreements that restrict dividends from subsidiaries, sell or otherwise dispose of assets, including capital stock of subsidiaries, enter into transactions with our affiliates, and enter into mergers or consolidations. Under the indentures, none of our subsidiaries are restricted from paying dividends to us. We have not paid cash dividends in 2002 or 2003. See note 12 for a more specific information on share repurchases.

#### **Other Financing Agreements**

Our compaction equipment business, part of the Industrial Products and Services segment, utilizes an accounts receivable securitization facility pursuant to which it has an agreement to sell, on a revolving basis without recourse, certain qualified receivables, of which \$32.2 had been sold under the agreement at September 30, 2003. The agreement allows for the sale of up to \$36.5 of certain qualified receivables to an unaffiliated third party entity and continues on an evergreen revolving basis unless we provide a three-month notice under the agreement to discontinue the facility. We expect to utilize the agreement in the foreseeable future. If we did not renew the contract, the impact on our financial condition or cash flows would not be material.

In April 2003, we entered into a three-year trade receivables financing agreement whereby we can borrow, on a continuous basis, up to \$130.0. As of September 30, 2003, we have not yet utilized this program.

### **(11) FINANCIAL INSTRUMENTS**

We have entered into interest rate protection agreements ("swaps") to hedge interest rate risk on our variable rate debt portfolio. Our swaps are accounted for as cash flow hedges, and, as of September 30, 2003, we had outstanding swaps with maturities to November 2009 that effectively convert \$1,300.0 of our variable rate debt to a fixed rate of approximately 7.0%.

As of September 30, 2003, the pre-tax accumulated derivative loss included in accumulated other comprehensive loss was \$78.7 and a long-term liability of \$78.7 has been recorded to recognize the fair value of these swaps. The ineffective portion of these swaps has been recognized in earnings as a component of interest expense and is not material. We do not enter into financial instruments for speculative or trading purposes.

From time to time we enter into commodity contracts or currency hedges. Other than the above noted swap arrangements, there were no material derivative instrument transactions during any of the periods presented.

## (12) SHAREHOLDERS' EQUITY

(All option and share amounts are in millions)

### Earnings Per Share

The following table sets forth calculations used in the computation of diluted earnings per share:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2002	2003	2002
<b>Numerator:</b>				
Net income from continuing operations before change in accounting principle	\$ 74.9	\$ 77.6	\$ 165.7	\$ 208.9
Loss from discontinued operations, net of tax		(1.8)	(28.6)	(9.7)
Change in accounting principle				(148.6)
Net income	\$ 74.9	\$ 75.8	\$ 137.1	\$ 50.6
<b>Denominator:</b>				
Weighted-average shares outstanding	75.601	81.968	77.593	81.954
Effect of dilutive securities:				
Employee stock options and warrants	1.119	1.226	0.574	1.818
Adjusted weighted-average shares and assumed conversions	76.720	83.194	78.167	83.772

At September 30, 2003, 16.7 was the total number of stock options that could be considered as potential common shares that were not included in the computation of diluted earnings per share because their impact would be anti-dilutive based on the current market prices of our common stock.

### Comprehensive Income

The components of comprehensive income were as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2002	2003	2002
Net income	\$ 74.9	\$ 75.8	\$ 137.1	\$ 50.6
Foreign currency translation adjustment	(21.8)	41.5	65.5	37.7
Unrealized gains (losses) on qualifying cash flow hedges, net of tax	18.5	(19.3)	2.3	(25.5)
Comprehensive income	\$ 71.6	\$ 98.0	\$ 204.9	\$ 62.8

The components of the balance sheet caption accumulated other comprehensive loss are as follows:

	September 30, 2003	December 31, 2002
Foreign currency translation adjustment	\$ 149.4	\$ 83.9
Unrealized losses on qualifying cash flow hedges, net of tax	(46.2)	(48.5)
Minimum pension liability adjustment, net of tax	(233.0)	(233.0)
Accumulated other comprehensive loss	\$ (129.8)	\$ (197.6)

### Share Repurchases and Cash Dividends

In the first nine months of 2003, we repurchased 5.1 shares of our common stock on the open market, for cash of \$195.4. We have not paid cash dividends in 2003 or 2002. We are subject to various restrictions under our senior secured credit agreement and senior note indenture, which limit our capacity to repurchase our stock for cash or to pay cash dividends. Under the most restrictive covenant, which is presently in our senior note indenture, our available capacity to make restricted payments, which includes paying cash dividends or repurchasing our stock, is \$127.9 as of September 30, 2003.

### (13) OTHER MATTERS

In July 2003, we sold our 20% interest in the Assa Abloy door joint venture for \$76.2 and recognized a \$1.9 gain on the sale. We previously accounted for our interest in the joint venture under the equity method of accounting.

Certain other matters including contingencies are discussed in this Form 10-Q in the “Other Matters — Environmental and Legal Exposure,” “Other Matters - Pending Litigation” and “Current Liquidity and Concentration of Credit Risk” portions of the Management’s Discussion and Analysis of Financial Condition and Results of Operations.

### ITEM 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) (in millions except per share and per LYONs data)

#### OVERVIEW

We are a global multi-industry company that is focused on profitably growing a number of platform businesses that have scale and growth potential. We are a multinational corporation with operations in over 20 countries. We have approximately 22,700 employees worldwide. Our strategy is to create market advantages through technology, service and product leadership by expanding our market focus to offer full customer solutions and by building critical mass through strategic acquisitions. Our business strategy is focused on an integrated leadership process that aligns performance measurement, decision support, compensation and communication.

We are a global provider of technical products and systems, industrial products and services, flow technology and service solutions. Our products are used by a broad array of customers in various industries, including chemical processing, pharmaceuticals, infrastructure, mineral processing, petrochemical, telecommunications, transportation and power generation.

#### Discontinued Operations

As part of our ongoing strategic review process, we evaluated several alternatives for our Inrange Technologies Corporation (“Inrange”) subsidiary, part of our Technical Products and Systems segment, and concluded that it was a better strategic fit with another company. Therefore, on April 7, 2003, we announced that we had signed a definitive agreement with Computer Network Technology Corporation (“CNT”), which resulted in the acquisition by CNT of all of the outstanding shares of Inrange. On May 5, 2003, the sale of Inrange to CNT closed and our portion of the cash proceeds was \$148.5, after a \$24.5 settlement of an inter-company note payable by us to Inrange. We have accounted for the sale of Inrange as a discontinued operation in accordance with SFAS No. 144 “Accounting for the Impairment and Disposal of Long-Lived Assets.” Accordingly, the results of Inrange for all periods presented are included in the condensed consolidated financial statements and MD&A as discontinued operations. Therefore, unless otherwise indicated, amounts provided in MD&A pertain to continuing operations only.

#### CONSOLIDATED RESULTS OF OPERATIONS

The following unaudited information should be read in conjunction with our unaudited Condensed Consolidated Financial Statements and related notes.

	Three months ended September 30,		Nine months ended September 30,	
	2003	2002	2003	2002
Revenues	\$ 1,241.9	\$ 1,233.3	\$ 3,628.5	\$ 3,506.6
Gross margin	377.7	384.9	1,095.7	1,137.1
% of revenues	30.4%	31.2%	30.2%	32.4%
Selling, general and administrative expense	214.4	215.6	678.1	645.2
% of revenues	17.3%	17.5%	18.7%	18.4%
Intangible amortization	2.6	2.0	7.2	5.3
Special charges	13.5	4.4	46.8	49.9
Operating income	147.2	162.9	363.6	436.7
Other income, net	4.6	4.6	5.4	4.4
Equity earnings in joint ventures	8.5	8.6	26.2	27.2
Interest expense, net	(45.2)	(48.8)	(136.0)	(124.1)
Income from continuing operations before income taxes	\$ 115.1	\$ 127.3	\$ 259.2	\$ 344.2
Provision for income taxes	(40.2)	(49.7)	(93.5)	(135.3)
Income from continuing operations before change in accounting principle	\$ 74.9	\$ 77.6	\$ 165.7	\$ 208.9
Loss from discontinued operations, net of tax	—	(1.8)	(28.6)	(9.7)
Change in accounting principle <sup>(1)</sup>	—	—	—	(148.6)
Net income	\$ 74.9	\$ 75.8	\$ 137.1	\$ 50.6
Capital expenditures	\$ 18.5	\$ 18.6	\$ 54.2	\$ 60.8
Depreciation and amortization	29.0	32.5	92.5	88.3

<sup>(1)</sup> In 2002, we recorded a charge for a change in accounting principle of \$148.6 as a result of adopting the provisions of SFAS No. 142. See Note 8 to the Condensed Consolidated Financial Statements for more detail on this charge.

### **Consolidated Results of Operations: Third Quarter 2003 Compared to Third Quarter 2002**

*Revenues* — In the third quarter of 2003, revenues increased by \$8.6 from the same period in 2002. Organic revenues, revenues excluding acquisitions and divestitures, declined 5.9% in the third quarter of 2003 compared to the same period in 2002. Of the 5.9% decline, approximately 3.5% was due to a decline in revenues in the power market. The strength of foreign currencies against the U.S. dollar had a favorable impact on organic revenues of approximately 3.1%.

*Gross margin* — In the third quarter of 2003, gross margin decreased from 31.2% in 2002 to 30.4% in 2003. The decrease was due primarily to global competition and pricing pressures particularly at our power systems business, acquisitions completed in 2002 and in the first half of 2003, which have historically lower margins than our existing businesses and reduced demand for high margin products and services at our broadcast and communication platform and security and investigations business. In addition, pricing pressures impacted operating margins at our compaction equipment platform and lower gross profit margins were experienced at our hydraulic power unit business.

*Selling, general and administrative expense (“SG&A”)* — SG&A of \$214.4 in the third quarter of 2003 was down slightly compared to \$215.6 in the same period in 2002.

*Special and other charges* — In the third quarter of 2003, we recorded special charges of \$13.5 associated primarily with facility closures and consolidation actions. Of the charges, \$4.7 relates to costs associated with a facility consolidation at our hydraulic power tools business. The remaining charges relate primarily to costs associated with previously announced facility consolidation actions at our dock products business, our process equipment business, and our valves and controls business. In 2002, we recorded special and other charges of \$17.0 associated primarily with integration and restructuring actions, of which \$12.6 is recorded in cost of products sold.

*Other income, net* — In the third quarter of 2003, other income was \$4.6 which primarily is comprised of a \$1.7 gain on the sale of a facility and a \$1.9 gain on the sale of our 20% interest in the Assa Abloy door joint venture.

*Equity earnings in joint ventures* — Equity earnings in joint ventures was \$8.5 in the third quarter of 2003 compared to \$8.6 in the third quarter of 2002. Due to the sale of our interest in the Assa Abloy door joint venture we expect quarterly equity earnings in joint ventures to decline between \$1.5 to \$2.0 in the future.

*Interest expense, net* — In the third quarter of 2003, interest expense was \$45.2 compared to \$48.8 in 2002. When excluding \$10.1 of expense recorded in 2002 related to the July 2002 credit facility refinancing, interest expense in 2003 increased \$6.5 quarter over quarter. The increase is mainly related to the \$500.0 and \$300.0 senior note offerings completed in December 2002 and June 2003, respectively.

*Income taxes* — The effective income tax rate for the third quarter of 2003 was 34.9% compared to 39.0% in 2002. The U.S. Internal Revenue Service recently completed an income tax audit of the 1996 and 1997 tax years for United Dominion Industries (“UDI”), which we acquired in May of 2001. Accordingly, the effective income tax rate for the quarter was lower than the first half effective tax rate of 37% due to the favorable completion of these audits.

### **Consolidated Results of Operations: First Nine Months of 2003 Compared to First Nine Months of 2002**

*Revenues* — In the first nine months of 2003, revenues increased by \$121.9, or 3.5%, from 2002. Organic revenues, revenues excluding acquisitions and divestitures, declined 5.3% in the first nine months of 2003 compared to the same period in 2002. Excluding the impact of the decline of revenues in the power market, organic revenues were approximately flat with the prior year. The strength of foreign currencies against the U.S. dollar increased organic revenues by approximately 3.8%.

*Gross margin* — In the first nine months of 2003, gross margin decreased to 30.2% from 32.4% in 2002. The decrease was due primarily to global competition and pricing pressures particularly at our power systems and compaction equipment platforms, acquisitions completed in 2002 and 2003 which have historically lower margins than our existing businesses and reduced demand for high margin products and services at our broadcast and communication platform and security and investigations business. In addition, lower gross profit margins were experienced due to lower volumes and overhead absorption at our hydraulic power tool business.

*Selling, general and administrative expense (“SG&A”)* — In the first nine months of 2003, SG&A increased to \$678.1 from \$645.2 in 2002, a \$32.9 increase. The increase was driven primarily by acquisitions completed in 2002 and in the first nine months of 2003, and lower pension income in 2003 compared to 2002. In the second quarter, we realized a \$3.2 benefit from an operational cost improvement at an environmental remediation site in Stockton, CA. In addition, we recorded \$3.5 of corporate expense associated with the re-audit of our 2000 and 2001 financial statements performed in connection with the discontinued operations treatment for the sale of Inrange. In the first quarter of 2003, we negotiated two commercial sales contract matters that resulted in a \$5.8 favorable impact.

*Special and other charges* — In the first nine months of 2003, we recorded special charges of \$46.8 associated primarily with workforce reductions, facility closures and product line consolidations. In 2002, we recorded special and other charges of \$62.5 associated primarily with integration and restructuring actions, of which \$12.6 is recorded in cost of products sold. We have previously announced that we expect to take charges against earnings in 2003 in connection with implementing additional cost reduction actions or matters relating to asset impairments. We have estimated the range of these charges to be between \$70.0 to \$90.0, however, actual charges could be higher or lower than this range. We estimate that our restructuring actions will allow us to achieve operating cost reductions in 2003 and beyond through reduced employee and manufacturing costs and other facility overhead. The estimated period in which we realize savings on our restructuring actions is in the twelve months following the date of completion. For restructuring actions announced in the first nine months of 2003, we estimate that cost savings in the twelve months following the date of completion will be approximately \$62.0 per year. Estimated cost savings will be realized in cost of products sold and selling, general and administrative expenses.

*Other income, net* — In the first nine months of 2003, other income was \$5.4 compared to other income of \$4.4 in 2002.

*Interest expense, net* — In the first nine months of 2003, interest expense was \$136.0 compared to \$124.1 in 2002. When excluding \$10.1 of expense recorded in 2002 related to the July 2002 credit facility refinancing, interest expense in 2003 has increased \$22.0 as compared to 2002. The increase is mainly related to the \$500.0 and \$300.0 senior note offerings completed in December 2002 and June 2003, respectively, and partially was offset by lower borrowing costs achieved as a result of our prior credit facility refinancings.

*Income taxes* — The effective income tax rate for the first nine months of 2003 was 36.0% compared to 39.3% in 2002. The effective income tax rate for the nine month period in 2003 is below the first half effective tax rate of 37.0% due to the recent completion of the 1996 and 1997 UDI income tax audits.

#### **Seasonality, Competition and Trends**

Many of our businesses closely follow changes in the industries and end markets that they serve. In addition, certain businesses have seasonal fluctuations. Our Technical Products and Systems and Flow Technology segments tend to be stronger during the third and fourth quarters due to the purchasing patterns of customers. The Industrial Products and Services segment is usually strongest in the second quarter due primarily to the seasonal demand for products at the compaction equipment platform reported in this segment. The Service Solutions segment revenues typically follow the timing of new vehicle model introductions for diagnostic systems and service equipment, the largest market in this segment. In aggregate, our businesses generally tend to be stronger in the second half of the year, particularly in the fourth quarter. As described in the following section, we expect 2003 operating profits derived from the power generation markets to be \$53.0 to \$56.0 lower than 2002, of which approximately \$32.2 related to the first half of 2003. Accordingly, we expect reported net income in the second half of 2003 to be stronger than in the first half on a relative basis compared with prior years.

Although our businesses operate in highly competitive markets, our competitive position cannot be determined accurately in the aggregate or by segment since our competitors do not offer all of the same product lines or serve all of the same markets. In addition, specific reliable comparative figures are not available for many of our competitors. In most product groups, competition comes from numerous concerns, both large and small. The principal methods of competition are price, service, product performance and technical innovations. These methods vary with the type of product sold. We believe we can compete effectively on the basis of each of these factors as they apply to the various products we offer.

We define forecasted trends of organic revenues, revenues excluding the impact of acquisitions and dispositions, as follows: 'Growth' — Future organic revenues are expected to be above the prior year; 'Flat' — Future organic revenues are expected to be flat compared to the prior year; 'Decline' — Future organic revenues are expected to be below the prior year.

The platforms that experienced organic revenue growth in the first nine months of 2003 are summarized below. Also summarized are the 2003 annual forecasted trends for these platforms based on information available on the date of this report.

<u>Segment</u>	<u>Platform</u>	<u>2003 Annual Forecasted Trend</u>	<u>Comments</u>
Industrial Products and Services	Compaction equipment	Growth	Our compaction equipment platform provides products to the road construction, industrial construction and refuse management markets. This platform continues to experience organic growth due primarily to the favorable translation impact of the strength of the Euro relative to the U.S. Dollar and continued global market share gains. These favorable trends have offset softness in the road construction markets. The primary contributor of the market share gain is growth in the Asian market with the opening of a new manufacturing facility near Shanghai, China in 2002. This platform is highly seasonal by quarter, with the second quarter being the highest revenue period in the year.
Service Solutions	Specialty tools and technical information and services	Growth	Organic revenues increased by mid single digits in the first nine months of 2003 compared to the same period in the prior year. The primary demand for products in this platform is driven by new vehicle model introductions, new vehicle technology, such as integrated electronics, and regulatory changes. The expected full year organic growth is being driven by strong demand for domestic OEM dealer and aftermarket tools as well as regulatory changes in Europe and new vehicle launches.
Flow Technology	Cooling technologies and services	Growth	Low single digit organic revenue growth was experienced in the first nine months of 2003. Strong organic revenue growth in the European and Asian power and industrial markets combined with the favorable translation impact of the strong Euro relative to the U.S. Dollar more than offset the impact of revenue declines in the U.S. power and HVAC markets.

The primary platforms that experienced organic revenue declines in the first nine months of 2003 are summarized below. Also summarized are the 2003 annual forecasted trends for these platforms based on information available on the date of this report.

<u>Segment</u>	<u>Platform</u>	<u>2003 Annual Forecasted Trend</u>	<u>Comments</u>
Technical Products and Systems	Laboratory and life science products and services	Growth	Platform organic revenues declined low single digits in the first nine months of 2003, with low single digit organic growth experienced in the third quarter. Kendro, the primary business in this platform, grew low single digits in both the second and third quarters of 2003. Organic revenue growth is expected for this platform for the full year. New product introductions, new repository business and market share gains are expected to offset soft capital spending in the laboratory and life science markets.
	Security and building life-safety systems	Growth	Platform organic revenues declined low single digits in the first nine months of 2003, with mid single digit organic growth experienced in the third quarter. Organic revenue at Edwards Systems Technology, or EST, our building life-safety business, grew low single digits in the first nine months of 2003. EST is



			expected to grow low single digits in 2003 through new product introductions, market share gains and growth in Europe. Our security business experienced a significant decline in organic revenues for the first nine months of 2003 compared to 2002. The organic revenue decline at our security business was primarily due to a reduction in domestic security spending from the levels experienced for the period following September 11 <sup>th</sup> .
	Broadcast and communication systems and services	Decline	Organic revenues declined by over 25% percent for the first nine months of 2003 primarily due to extensions granted by the FCC delaying the High-Definition TV, or HDTV, rollout. The timing associated with these extensions remains uncertain as certain regulatory decisions and legislative actions are pending in this market with respect to broadcast customers. This platform has been positioned to provide turnkey systems to the markets it serves and, while there is uncertainty regarding the timing of the HDTV roll-out in 2003, the positive long-term view of these markets remains unchanged.
	Electrical test and measurement solutions	Decline	Demand for telecommunication line management systems is expected to remain below prior year levels. In addition, demand for automated fare collection systems is highly correlated to contract timing on large municipal contracts, which causes significant fluctuations from quarter to quarter.
Industrial Products and Services	Power systems	Decline	Power generation end markets continue to experience reduced demand and pricing pressures. Accordingly, our power systems platform experienced a sharp decline in revenues in 2003. Organic revenues are expected to decline by approximately 40% in 2003 compared to 2002. In 2003, the impact of lower product revenues, market pricing and the delay of certain engineering, service and construction contracts are expected to significantly reduce operating profits derived from the power generation markets.
	Specialty engineered products	Decline	This platform experienced low single digit revenue growth in 2002. Organic revenues in the first nine months of 2003 were down mid single digits as increased demand for aerospace defense components was offset by declines in filtration products, high-integrity castings, heating and ventilation products and hydraulic power tools. The demand for car and light truck vehicles in the U.S. strongly influences the demand for filtration and high-integrity casting products included in this platform and, accordingly, the organic revenues for this platform.
Flow Technology	Fluid systems	Decline	Cyclical demand for short-cycle products in power, chemical and mineral processing and industrial markets is expected to remain soft. Organic revenues in this platform are expected to decline low single digits in 2003.

**SEGMENT RESULTS OF OPERATIONS:**

	Three months ended September 30		Nine months ended September 30	
	2003	2002	2003	2002
<b>Revenues:</b>				
Technical Products and Systems	\$ 311.7	\$ 285.4	\$ 885.8	\$ 793.8
Industrial Products and Services	345.8	411.7	1,065.2	1,226.7
Flow Technology	386.5	370.1	1,120.1	966.5
Service Solutions	197.9	166.1	557.4	519.6
	<u>\$ 1,241.9</u>	<u>\$ 1,233.3</u>	<u>\$ 3,628.5</u>	<u>\$ 3,506.6</u>
<b>Segment Income:</b>				
Technical Products and Systems	\$ 54.6	\$ 61.1	\$ 138.9	\$ 153.6
Industrial Products and Services	36.7	57.0	108.7	184.7
Flow Technology	62.2	58.1	152.6	142.6
Service Solutions	24.6	18.5	63.2	60.4
	<u>178.1</u>	<u>194.7</u>	<u>463.4</u>	<u>541.3</u>
General Corporate	(17.4)	(14.8)	(53.0)	(42.1)
Special and Other Charges <sup>(1)</sup>	(13.5)	(17.0)	(46.8)	(62.5)
	<u>\$ 147.2</u>	<u>\$ 162.9</u>	<u>\$ 363.6</u>	<u>\$ 436.7</u>

<sup>(1)</sup> The three and nine month periods ended September 30, 2002 include \$12.6 of charges recorded in cost of products sold.

**Segment Results of Operations: Third Quarter 2003 Compared to Third Quarter 2002**
**Technical Products and Systems**

**Revenues** — Revenues in the third quarter increased from \$285.4 in 2002 to \$311.7 in 2003, an increase of \$26.3 or 9.2%. The increase was mainly due to bolt-on acquisitions and organic revenue growth at our security and building life-safety systems and laboratory and life sciences platforms in the third quarter. Organic revenues in the Technical Products and Systems segment declined high single-digits in the quarter due to delays in the HDTV roll out in the U.S. and lower revenues in our electrical test and measurement platform. The decline in electrical test and measurement platform revenues was primarily due to lower demand for telecommunication line management systems at our Radiodetection unit. In addition, contract timing on large municipal programs generated strong third quarter 2002 revenues at our automated fare collections systems unit, making the year over year comparison difficult.

**Segment Income** — Segment income as a percentage of revenues decreased from 21.4% in 2002 to 17.5% in 2003. The decrease in operating margins was due primarily to acquisitions completed in 2002 and 2003, which had historically lower margins than that of the segment, reduced demand for high margin products and services at our broadcast and communication platform and security and investigations business, the lower organic revenues in the electrical test and measurement platform and global competition across all of our platforms.

### *Industrial Products and Services*

*Revenues* — Revenues in the third quarter decreased from \$411.7 in 2002 to \$345.8 in 2003. The decrease was primarily due to the significant decline in the power market. Revenues in our power systems platform declined by approximately \$39.7, or an organic decline of approximately 51%. Organic revenues at our compaction equipment platform grew slightly in the third quarter primarily due to currency translation. In our specialty engineered products platform, organic revenues were down mid single digits as increased demand for aerospace defense components and dock systems was offset by declines in filtration products, high-integrity castings, heating and ventilation products and hydraulic power tools.

*Segment Income* — Segment income as a percentage of revenues declined from 13.8% in 2002 to 10.6% in 2003. Segment income declined primarily due to the power systems market decline as well as the effect on pricing and operating margins at our compaction equipment platform and operating inefficiencies at our hydraulic power tools business. The trends in the hydraulic power tools business have continued through mid-2003 and we have announced further restructuring actions at this business. Segment income comparisons are expected to improve at our hydraulic power tools business in the fourth quarter. The relative strength of the euro to the U.S. dollar has impacted margins at our compaction equipment platform in U.S. dollar markets such as the Middle East and Asia. As expected, this trend has impacted the third quarter of 2003 compared to the same period in 2002.

### *Flow Technology*

*Revenues* — Revenues in the third quarter of 2003 increased to \$386.5 from \$370.1 in the third quarter of 2002. The increase was primarily due to bolt-on acquisitions completed in 2002 and in the first nine months of 2003 and organic revenue growth at our cooling technologies and services platform. The aggregate organic revenues in our Flow Technology segment declined approximately 4% in the third quarter of 2003 compared to the same period in 2002 due to the low double digit organic revenue decline at our fluid systems platform.

*Segment Income* — Third quarter segment income increased to \$62.2 in 2003 from \$58.1 in 2002 due to bolt-on acquisitions and cost reduction actions taken across the segment, including integration of acquisitions completed. The segment income as a percentage of revenues was 16.1% in 2003 compared to 15.7% in 2002.

### *Service Solutions*

*Revenues* — Revenues in the third quarter of 2003 were \$197.9 compared to \$166.1 in 2002, representing an organic revenue increase of approximately 18% in the quarter. The strong organic revenues were due to new warranty tool programs in the U.S., strong sales in Europe and the strength of the euro compared to the U.S. dollar.

*Segment Income* — Segment income as a percentage of revenues increased from 11.1% in 2002 to 12.4% in 2003. The increase in operating margins was due primarily to product mix changes and the impact of cost reduction initiatives and higher revenues.

## **Segment Results of Operations: First Nine Months of 2003 Compared to First Nine Months of 2002**

### *Technical Products and Systems*

*Revenues* — Revenues in the first nine months of 2003 increased to \$885.8 from \$793.8 in the first nine months of 2002, an 11.6% increase. The increase was due mainly to bolt-on acquisitions. Organic revenues in this segment declined 8.2% in the first nine months of 2003 due to delays in the HDTV rollout in the U.S., contract timing at our automated fare collection systems business and lower demand for telecommunication products which are reported in our electrical test and measurement solutions platform, and lower revenues in our security and investigations business due to higher corporate spending on these services in 2002. Organic revenues at EST, our building life-safety business, increased low single digits in the first nine months.

*Segment Income* — Segment income as a percentage of revenues decreased from 19.3% in 2002 to 15.7% in 2003. The decrease in operating margins was due primarily to the decline in organic revenues in the first nine months of 2003 compared to the first nine months of 2002 and acquisitions completed in 2002, which have historically lower margins than that of the segment.

### *Industrial Products and Services*

*Revenues* — Revenues in the first nine months of 2003 decreased to \$1,065.2 from \$1,226.7 in 2002. The decrease was due primarily to the significant decline in the power market. Revenues in our power systems platform declined by approximately \$123.4 representing an organic decline of approximately 46.5%. As expected, the trend in significant organic revenue decline has continued through the first nine months of 2003. Organic revenues are expected to decline by approximately 40% for the year. Organic revenues at our compaction equipment business grew in the first nine months of 2003 due to a strong currency and higher revenues in

Asia than in the prior year. Our specialty engineered products platform organic revenues declined mid single digits in the first nine months of 2003.

*Segment Income* — Segment income as a percentage of revenues declined from 15.1% in 2002 to 10.2% in 2003. Segment income declined primarily due to the power systems market decline as well as the effect of a strong euro on pricing and operating margins at our compaction equipment platform and operating inefficiencies at our hydraulic power tools business.

#### *Flow Technology*

*Revenues* — Revenues in the first nine months of 2003 increased to \$1,120.1 from \$966.5 in the first nine months of 2002. The increase was primarily due to bolt-on acquisitions completed in 2002 and in the first nine months of 2003 and organic revenue growth at our cooling technologies and services platform. Organic revenues for the segment declined low single-digits in the first nine months of 2003 compared to 2002 as organic growth in the cooling technologies and services platform was offset by mid-single digit revenue decline at fluid systems.

*Segment Income* — Segment income in the first nine months of 2003 increased by \$10.0 to \$152.6 primarily due to bolt-on acquisitions and cost reduction actions taken across the segment, including integration of acquisitions completed. Segment income as a percentage of revenues was 13.6% in 2003 compared to 14.8% in 2002. The decline in segment income as a percentage of revenues was due primarily to lower margins contributed from the acquisitions of Balcke and Daniel Valve in 2002 and Hankison in 2003.

#### *Service Solutions*

*Revenues* — Revenues in the first nine months of 2003 were \$557.4 compared to \$519.6 in 2002, representing organic revenue growth of approximately 6.4% in the first nine months of 2003.

*Segment Income* — Segment income as a percentage of revenues was relatively flat at 11.3% in 2003 compared to 11.6% in 2002.

### LIQUIDITY AND FINANCIAL CONDITION

Our liquidity needs arise primarily from capital investment in equipment and facilities, funding working capital requirements to support business growth initiatives, debt service costs and acquisitions.

#### Cash Flow

	Nine months ended September 30,	
	2003	2002
Cash flows from (used in):		
Operating activities	\$ 296.8	\$ 275.0
Investing activities	(10.7)	(183.0)
Financing activities	(145.2)	(254.3)
Continuing operations	\$ 140.9	\$(162.3)
Discontinued operations	9.2	(26.3)
Net change in cash balances	\$ 150.1	\$(188.6)

*Operating Activities*—In the first nine months of 2003, cash flows from operating activities were higher by \$21.8 compared to the first nine months of 2002. When excluding the \$34.8 net cash received from a legal award in the first quarter of 2002, operating cash flow in the first nine months of 2003 increased \$56.6 or 23.6%. This improvement is attributable to a \$107.3 year over year improvement in accounts receivable, excluding the 2002 legal award. Cash spending on restructuring actions in the first nine months of 2003 was \$49.3.

*Investing Activities*—In the first nine months of 2003, we used \$10.7 of cash in investing activities compared to a use of \$183.0 in 2002. The \$172.3 year over year decrease resulted from \$148.5 of cash that we received in May 2003 for the sale of our ownership in Inrange and \$76.2 of cash received in July 2003 for the sale of our 20% ownership in the Assa Abloy door joint venture. These cash proceeds were partially offset by a \$40.8 increase in cash spent on acquisitions. Cash used for business acquisitions was \$189.2 in the first nine months of 2003 as compared to \$148.4 in the first nine months of 2002. In the first nine months of 2003, we acquired ten companies, compared to eight companies in the same period in 2002. Capital expenditures were \$54.2 in the first nine months of 2003 compared to \$60.8 in 2002. We continue to maintain a disciplined approach to capital expenditure allocation, which primarily focuses

on deploying capital spending in businesses that are experiencing positive end market momentum, outsourcing non-core operations or integrating bolt-on acquisitions.

*Financing Activities*—In the first nine months of 2003, cash flows used in financing activities were \$145.2 compared to \$254.3 in the first nine months of 2002. In the first nine months of 2003, we used \$236.9 of cash to settle 0.387 of LYONs that were put to us in May. The LYONs settlement was offset by our issuance of \$300.0 of senior notes in June 2003. As a result of renegotiated repayment terms under the December 2002 amendment to our senior credit facility, scheduled principal payments under the facility were \$70.5 lower in the first nine months of 2003 as compared to the same period in 2002. In addition, in the first nine months of 2003 we have purchased 5.1 shares of our common stock for \$195.4. During the same period in 2002, we purchased 1.6 shares of our common stock for \$77.5. In 2002, cash flows used in financing activities included \$72.8 of cash received from the exercise of employee stock options and the exercise of stock warrants. Due to the fact that all stock warrants outstanding were exercised or expired in 2002, no cash has been received in 2003 from the exercise of stock warrants.

## Indebtedness

The following summarizes the total debt outstanding and credit facility availability, as of September 30, 2003:

	Total Commitment	Amount Outstanding	Unused Credit Availability
Revolving loan <sup>(1)</sup>	\$ 500.0	\$ —	\$ 353.1
Tranche A loan	219.4	219.4	—
Tranche B loan	1,090.9	1,090.9	—
LYONs, net of unamortized discount of \$386.0	636.4	636.4	—
7.5% senior notes	500.0	500.0	—
6.25% senior notes	300.0	300.0	—
Other borrowings	15.9	15.9	—
<b>Total</b>	<b>\$ 3,262.6</b>	<b>\$ 2,762.6</b>	<b>\$ 353.1</b>

<sup>(1)</sup> Decreased by \$146.9 of certain facility letters of credit outstanding at September 30, 2003, which reduce the availability under our revolving loan agreement.

## Credit Facility

In August 2003, we refinanced our credit facility by combining the existing Tranche C term loan into the Tranche B term loan. The purpose of this refinancing was to reduce the applicable rate on the Tranche C borrowings and to amend certain covenants including, but not limited to, increased flexibility with respect to dividend payment and stock repurchases. The new combined Tranche B term loan matures in September 2009.

Under our credit facility, the term loans bear interest, at our option, at LIBOR plus the Applicable Rate or the ABR plus the Applicable Rate. During the first nine months of 2003, interest on the term loans was calculated using LIBOR and we intend to select LIBOR as the borrowing rate in the future. The Applicable Rate for the revolving loans and Tranche A term loan is based upon the Consolidated Leverage Ratio as defined in the credit facility. The Applicable Rate is as follows:

	LIBOR based borrowings	ABR based borrowings
Tranche A term loans and revolving loans	Between 1.75% and 2.25%	Between 0.75% and 1.25%
Tranche B term loans	2.25%	1.25%

Our \$500.0 of revolving loans available under the credit facility is also subject to annual commitment fees between 0.25% and 0.5% on the unused portion of the loans. At September 30, 2003, no amounts were borrowed against the \$500.0 revolving loans; however, the aggregate available borrowing capacity was reduced by \$146.9 of letters of credit outstanding.

The credit facility is secured by a pledge of 100% of the stock of substantially all of our domestic subsidiaries and 66% of the stock in our foreign subsidiaries and a security interest in substantially all of our assets and all of the assets of our wholly owned domestic subsidiaries (excluding our interest in the EGS joint venture).

The credit facility contains covenants, the most restrictive of which are two financial condition covenants. The first financial condition covenant does not permit the Consolidated Leverage Ratio (as defined in the credit facility) on the last day of any period of four consecutive fiscal quarters to exceed 3.25 to 1.00. The second financial condition covenant does not permit the Consolidated Interest Coverage Ratio (as defined in the credit facility) for any period of four consecutive fiscal quarters to be less than 3.50 to 1.00.

For the quarter ended September 30, 2003, our Consolidated Leverage Ratio was 2.64 to 1.00 and our Consolidated Interest Coverage Ratio was 5.83 to 1.00.

The credit facility also includes covenant provisions regarding, among other things, indebtedness, liens, investments, guarantees, acquisitions, dispositions, sales and leaseback transactions, restricted payments and transactions with affiliates. Based on available information, we do not expect these covenants to restrict our liquidity, financial condition or access to capital resources in the foreseeable future. Under the credit facility covenants, our ability to pay cash dividends in a fiscal year is limited to \$75.0 plus an amount equal to 50% of Consolidated Net Income (as defined in the covenants) for the immediate preceding fiscal year. In addition, our credit facility contains the following covenants regarding our ability to repurchase shares of our common stock; (1) if our consolidated leverage ratio (as defined in the credit facility) is greater than 3.0, our share repurchase capacity is limited to \$100.0, (2) if our consolidated leverage ratio is between 3.0 and 2.0, our share repurchase capacity is limited to \$200.0 plus an amount equal to 50% of consolidated net income from October 1, 2002 to the end of the most recent fiscal period, less any cash dividends paid in excess of \$75.0 and (3) if our consolidated leverage ratio is less than 2.0, our share repurchase capacity is unlimited. We have not paid cash dividends in 2002 or 2003. See 'other matters – share repurchases' in this MD&A for more specific information on share repurchases.

We are permitted to prepay the Tranche A and Tranche B term loans in whole or in part at any time without penalty or premium. We are not allowed to reborrow any amounts that we repay on the Tranche A or Tranche B term loans.

The final maturity for each loan is as follows:

	<u>Date of Final Maturity</u>
Revolving loans	March 31, 2008
Tranche A term loans	March 31, 2008
Tranche B term loans	September 30, 2009

The credit facility also requires scheduled principal payments of the term loans and mandatory prepayments from net proceeds arising in connection with certain asset sales or dispositions and issuances of subordinated debt under certain circumstances.

The revolving loans may be borrowed, prepaid and reborrowed. Letters of credit and swing line loans are also available under the revolving credit facility. The facility provides for the issuance of letters of credit in U.S. Dollars, Euros, and Pounds Sterling at any time during the revolving availability period, in an aggregate amount not exceeding \$250.0. Letters of credit issued under this facility reduce the aggregate amount available under the revolving loan commitment.

#### **Liquid Yield Option Notes**

On February 6, 2001, we issued Liquid Yield Option(TM) Notes ("February LYONs") at an original price of \$579.12 per \$1,000 principal amount at maturity, which represents an aggregate initial issue price of \$576.1 and an aggregate principal amount of \$994.8 due at maturity on February 6, 2021. On May 9, 2001, we issued Liquid Yield Option (TM) Notes ("May LYONs") at an original price of \$579.12 per \$1,000 principal amount at maturity, which represents an aggregate initial issue price including the over allotment exercised by the original purchaser of \$240.3 and an aggregate principal amount of \$415.0 due at maturity on May 9, 2021.

We may redeem all or a portion of the February LYONs for cash at any time on or after February 6, 2006 at predetermined redemption prices. February LYONs holders may require us to purchase all or a portion of their LYONs on February 6, 2004 for \$628.57 per LYON, February 6, 2006 for \$663.86 per LYON, or February 6, 2011 for \$761.00 per LYON. We may redeem all or a portion of the May LYONs for cash at any time on or after May 9, 2005. May LYONs holders may require us to purchase all or a portion of their LYONs on May 9, 2005 for \$645.97 per LYON or May 9, 2009 for \$720.55 per LYON. For either the February LYONs or May LYONs, we have the option to pay the purchase price in cash, shares of common stock or a combination of cash and common stock.

On May 9, 2003, 0.387 of the May LYONs were put to us and settled in cash for \$236.9, their accreted value as of May 9, 2003. The 0.028 May LYONs that remain outstanding subsequent to the put have an accreted value of \$17.1 at September 30, 2003 and are classified as long-term debt. Due to the settlement, we were subject to tax recapture on the majority of the May LYONs interest deduction. This resulted in an income tax payment of \$11.6, which we paid in the third quarter of 2003.

SFAS No. 78, "Classification of Obligations That are Callable by the Creditor," requires that obligations, that are by their terms, due upon demand within one year of the balance sheet date, should be considered short-term obligations. The February LYONs have a put option date within twelve months of September 30, 2003. Therefore, of the \$619.3 total accreted value of the February LYONs at September 30, 2003, we have classified \$266.2 as short-term debt. We have classified \$353.1 as long-term debt as we have the ability and intent at September 30, 2003, through the availability of our revolving loans, to refinance the amount of any February LYONs that

may be put to us. The next put date for the May LYONs is May 9, 2005 and therefore all May LYONs outstanding at September 30, 2003 are classified as long-term debt. In addition to using our revolving loans for the February LYONs classified as long-term debt, we may use cash, the trade receivable financing agreement that we entered into in April 2003, or other capital market refinancings to fund the short-term portion of these obligations if they are put to us or reach maturity.

The LYONs have a yield to maturity of 2.75% per year, computed on a semi-annual bond equivalent basis, calculated from the date of issuance. We will not pay cash interest on the LYONs prior to maturity unless contingent interest becomes payable. The LYONs are unsecured and unsubordinated obligations and are debt instruments subject to United States federal income tax contingent payment debt regulations. Even if we do not pay any cash interest on the LYONs, bondholders are required to include interest in their gross income for United States federal income tax purposes. This imputed interest, also referred to as tax original issue discount, accrues at a rate equal to 9.625% on the February LYONs and 8.75% on the May LYONs. The rate at which the tax original issue discount accrues for United States federal income tax purposes exceeds the stated yield of 2.75% for the accrued original issue discount. In the event that any of the February LYONs or May LYONs are put to the company or redeemed by the company, the respective imputed interest deduction less the original issue discount of 2.75% would be recaptured at the time of the put or redemption. As a result of the put on May 9, 2003, we were subject to \$11.6 of tax recapture on the May LYONs. For the February LYONs, the amount of the total recapture calculated on the first put date would be approximately \$54.8 on February 6, 2004.

The LYONs are subject to conversion to shares of our common stock only if certain contingencies are met. These contingencies include:

- (1) Our average stock price exceeding predetermined accreted values of our stock price each quarter (see below);
- (2) During any period in which the credit rating assigned to the LYONs by either Moody's or Standard & Poor's is at or below a specified level;
- (3) Upon the occurrence of certain corporate transactions, including a change in control.

In addition, a holder may surrender for conversion, at the accreted value, a LYON for redemption even if it is not otherwise convertible at such time.

The conversion rights based on predetermined accretive values of our stock include, but are not limited to, the following provisions:

	<u>February LYONs</u>	<u>May LYONs</u>
Initial Conversion Rate (shares of common stock per LYON)	9.6232	8.8588
Initial Stock Price	\$ 50.15	\$ 55.40
Initial Accretion Percentage	135%	120%
Accretion Percentage Decline Per Quarter	0.3125%	0.125%
Conversion Trigger Prices—For the Next Twelve Months:		
2003 Fourth Quarter	\$ 85.33	\$ 82.97
2004 First Quarter	\$ 85.71	\$ 83.45
2004 Second Quarter	\$ 86.09	\$ 83.93
2004 Third Quarter	\$ 86.98	\$ 84.42

Holders may surrender LYONs for conversion into shares of common stock in any calendar quarter, if, as of the last day of the preceding calendar quarter, the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of such preceding calendar quarter is more than the specified percentage beginning at 135% and declining 0.3125% per quarter thereafter for the February LYONs, beginning at 120% and declining 0.125% per quarter thereafter for the May LYONs of the accreted conversion price per share of common stock on the last trading day of such preceding calendar quarter. The accreted conversion price per share as of any day will equal the issue price of a LYON plus the accrued original issue discount to that day, divided by the number of shares of common stock issuable upon conversion of a LYON on that day.

Under GAAP, the LYONs are not included in the diluted income per share of common stock calculation unless a LYON is expected to be converted for stock or one of the three contingent conversion tests summarized above are met. If the LYONs were to be put, we expect to settle them for cash and none of the contingent conversion tests have been met, accordingly, they are not included in the diluted income per share of common stock calculation. If converted as of September 30, 2003, the February LYONs and May LYONs would be exchanged for a total of 9.8 million shares of our common stock. If the LYONs had been converted as of January 1, 2003, diluted income per share of common stock from continuing operations would have been \$0.91 and \$2.01 for the three and nine-month periods ended September 30, 2003.

## Senior Notes

In June 2003, we issued \$300.0 of 6.25% senior notes pursuant to our universal shelf registration statement. These notes mature on June 15, 2011. In December 2002, we issued \$500.0 of 7.5% senior notes pursuant to our universal shelf registration statement. These notes mature on January 1, 2013. Both of these note issuances are unsecured and rank equally with all of our existing and future unsecured senior indebtedness, but are effectively junior to our senior secured debt and obligations of our subsidiaries.

The indentures governing the notes contain a number of covenants that limit our ability and the ability of our subsidiaries, to incur additional debt, pay dividends and repurchase stock, make other restricted payments, including, without limitation, investments, create liens, enter into sale leaseback transactions, enter into agreements that restrict dividends from subsidiaries, sell or otherwise dispose of assets, including capital stock of subsidiaries, enter into transactions with our affiliates, and enter into mergers or consolidations. Under the indentures, none of our subsidiaries are restricted from paying dividends to us. We have not paid cash dividends in 2002 or 2003. See 'other matters – share repurchases' in this MD&A for a more specific information on share repurchases.

## Other Financing Agreements

Our compaction equipment business, part of the Industrial Products and Services segment, utilizes an accounts receivable securitization facility pursuant to which it has an agreement to sell, on a revolving basis without recourse, certain qualified receivables, of which \$32.2 had been sold under the agreement at September 30, 2003. The agreement allows for the sale of up to \$36.5 of certain qualified receivables to an unaffiliated third party entity and continues on an evergreen revolving basis unless we provide a three-month notice under the agreement to discontinue the facility. We expect to utilize the agreement in the foreseeable future. If we did not renew the contract, the impact on our financial condition or cash flows would not be material.

In April 2003, we entered into a three-year trade receivables financing agreement whereby we can borrow, on a continuous basis, up to \$130.0. As of September 30, 2003, we have not yet utilized this program.

## Financial Instruments

We have entered into interest rate protection agreements ("swaps") to hedge interest rate risk on our variable rate debt portfolio. Our swaps are accounted for as cash flow hedges, and, as of September 30, 2003, we had outstanding swaps with maturities to November 2009 that effectively convert \$1,300.0 of our variable rate debt to a fixed rate of approximately 7.0%.

As of September 30, 2003, the pre-tax accumulated derivative loss included in accumulated other comprehensive loss was \$78.7 and a long-term liability of \$78.7 has been recorded to recognize the fair value of these swaps. The ineffective portion of these swaps has been recognized in earnings as a component of interest expense and is not material. We do not enter into financial instruments for speculative or trading purposes.

From time to time we enter into commodity contracts or currency hedges. Other than the above noted swap arrangements, there were no material derivative instrument transactions during any of the periods presented.

## Current Liquidity and Concentration of Credit Risk

At September 30, we had \$706.0 of cash available for use and an unused \$500.0 revolver under our credit facility. When adjusted by the \$146.9 of letters of credit outstanding at September 30, 2003, \$353.1 of the revolver was available for use.

We believe that current cash and equivalents, cash flows from operations and our unused revolving credit facility will be sufficient to fund working capital needs, planned capital expenditures, other operational cash requirements, and required debt service obligations. In addition, we have the ability and may elect to refinance any LYONs, if put, with other debt.

We have a shelf registration statement for 8.3 shares of common stock that may be issued for acquisitions and we have filed a shelf registration statement enabling us to sell up to \$1,000.0 of securities of which \$800.0 has been used for the offering of our 6.25% and 7.5% senior notes. In addition, we have filed a new shelf registration statement for \$1,000.0 of securities which, when declared effective by the SEC, will replace our existing shelf registration statement. The remaining availability under this shelf registration statement may be used in connection with an offering of debt securities and/or common stock for general corporate purposes or for the refinancing of existing debt. In addition, other financing instruments may be used from time to time, including but not limited to private placement instruments, operating leases, capital leases and securitizations. We expect that we will continue to access these markets as appropriate to maintain liquidity and to provide sources of funds for general corporate purposes or to refinance existing



debt. In April 2003, we entered into a three-year trade receivables financing agreement whereby we can borrow, on a continuous basis, up to \$130.0. As of October 27, 2003, we have not yet utilized this program. In addition, we strive to negotiate the best cash payment terms with our vendors and customers. There can be no assurance that similar payment terms will be available to us in future periods.

We were in compliance with all covenants included in our capital financing instruments as of September 30, 2003. We have not paid cash dividends in 2003 or 2002, and we have no current plans to pay cash dividends on our common stock this fiscal year. However, we have announced that we are reconsidering our policy relating to the payment of a quarterly cash dividend, which was discontinued in 1997. This reconsideration is being undertaken in light of recent changes in tax laws and related shareholder expectations. Our Board of Directors has committed to studying the dividend policy over the remainder of 2003, with a decision to be made for the first quarter of 2004. As part of the study and ultimate decision, the Board intends to consider various factors including our goal of maintaining investment grade status and sufficient financial flexibility, along with peer group policies and investor input. The covenants of our senior credit facility as well as the indenture of our senior notes contain certain restrictions on the payment of dividends. See the respective sections in this MD&A as well as the footnotes to the condensed consolidated financial statements for more information on dividend restrictions under our credit facility and senior notes.

Financial instruments that potentially subject us to significant concentrations of credit risk consist of cash and temporary investments, trade accounts receivable and interest rate protection agreements. Cash and temporary investments and our interest rate protection agreements are placed with various high-quality financial institutions throughout the world, and exposure is limited at any one institution. We periodically evaluate the credit standing of these financial institutions.

We are exposed to credit losses in the event of nonperformance by counter parties to our interest rate protection agreements, but have no other off-balance-sheet credit risk of accounting loss. We anticipate, however, that counter parties will be able to fully satisfy their obligations under the contracts. We do not obtain collateral or other security to support financial instruments subject to credit risk, but we do monitor the credit standing of counter parties.

Concentrations of credit risk arising from trade accounts receivable are due to selling to a large number of customers in a particular industry. We perform ongoing credit evaluations of our customers' financial conditions and obtain collateral or other security when appropriate.

As of September 30, 2003, we had \$231.1 of certain standby letters of credit outstanding, of which \$146.9 reduce the available borrowing capacity on our revolving loans, and approximately \$129.3 of surety bonds. Of the total letters of credit and surety bonds outstanding at September 30, 2003, \$253.2 are for commercial bid, performance or warranty arrangements related to sales contracts with customers, of which the fees are reimbursed by the customer. In addition, \$67.1 of our standby letters of credit relate to self insurance matters and originate from workers compensation, auto, or general liability claims made against us. We account for each of these claims as part of our self-insurance accruals. Except for the previously mentioned matters, we do not have any other material guarantees, off-balance sheet arrangements or purchase commitments.

Our Certificate of Incorporation provides that we shall indemnify our officers and directors to the fullest extent permitted by the Delaware General Corporation Law for any personal liability in connection with their employment or service with us, subject to limited exceptions. While we maintain insurance for this type of liability, the liability could exceed the amount of the insurance coverage.

In addition "Factors That May Affect Future Results," included in Management's Discussion and Analysis of Financial Condition and Results of Operations in our 2002 Annual Report on Form 10-K, as amended, and in any subsequent filings, should be read for an understanding of the risks, uncertainties, and trends facing our businesses.

#### **Other Matters**

*Acquisitions and Divestitures* — Consistent with our strategy to focus on building platforms for profitable growth, we continually review each of our businesses pursuant to our "fix, sell or grow" strategy. These reviews could result in selected acquisitions to expand an existing business or result in the disposition of an existing business or product line. In the first nine months of 2003, we have completed ten strategic bolt-on acquisitions, completed the sale of Inrange in May and in July we sold our 20% interest in the Assa Abloy door joint venture. All of our decisions regarding acquisitions and divestitures are based on an economic cash flow model. We may consider a larger acquisition, more than \$1,000.0 in revenues, if certain criteria are met or we may consider further business divestitures when we believe the business has a better strategic fit with another company that increases the overall cash flow returns to investors. There can be no assurances that our acquisitions or divestitures, individually or in the aggregate, will not have an impact on our capital financing instruments, will be integrated successfully, or that they will not have a negative effect on our results of operations, liquidity or financial condition.

*Environmental and Legal Exposure* — We are subject to various environmental laws, ordinances, regulations, and other requirements of government authorities in the United States and other nations. These requirements may include, for example, those governing discharges from and materials handled as part of our operations, the remediation of soil and groundwater contaminated by petroleum products or hazardous substances or wastes, and the health and safety of our employees. Under certain of these laws, ordinances or regulations, a current or previous owner or operator of property may be liable for the costs of investigation, removal or remediation of certain hazardous substances or petroleum products on, under, or in its property, without regard to whether the owner or operator knew of, or caused, the presence of the contaminants, and regardless of whether the practices that resulted in the contamination were legal at the time they occurred. The presence of, or failure to remediate properly, these substances may have adverse effects, including, for example, substantial investigative or remedial obligations and limitations on the ability to sell or rent that property or to borrow funds using that property as collateral. Under certain of these laws, ordinances or regulations, a party that disposes of hazardous substances or wastes at a third party disposal facility may also become a responsible party required to share in the costs of site investigation and environmental remediation. In connection with our acquisitions and divestitures, we may assume or retain significant environmental liabilities. Although we perform extensive due diligence with respect to acquisitions, divestitures and continuing operations, there may be environmental liabilities of which we are not aware. Future developments related to new or existing environmental matters or changes in environmental laws or policies could lead to material costs for environmental compliance or cleanup. There can be no assurance that these liabilities and costs will not have a material adverse effect on our results of operations or financial position in the future.

Numerous claims, complaints and proceedings arising in the ordinary course of business, including but not limited to those relating to environmental matters, competitive issues, contract issues, intellectual property matters, personal injury and product liability claims, and workers' compensation have been filed or are pending against us and certain of our subsidiaries. Additionally, we may become subject to significant claims of which we are currently unaware or the claims that we are aware of may result in our incurring a significantly greater liability than we anticipate. This may also be true in connection with past or future acquisitions. While we maintain property, cargo, auto, product, general liability, and directors' and officers' liability insurance and have acquired rights under similar policies in connection with these acquisitions that we believe cover a portion of these claims, this insurance may be insufficient or unavailable to protect us against potential loss exposures. In addition, we have been increasing our self-insurance limits over the past several years. While we believe we are entitled to indemnification from third parties for some of these claims, these rights may be insufficient or unavailable to protect us against potential loss exposures.

It is our policy to comply fully with applicable environmental requirements. We are currently involved in various investigatory and remedial actions at our facilities and at third party waste disposal sites. An estimate of loss, including expenses, from legal actions or claims is accrued when events exist that make the loss or expenses probable and we can reasonably estimate them. Our environmental accruals cover anticipated costs, including investigation, remediation, and operation and maintenance of clean-up sites. Our estimates are based primarily on investigations and remediation plans developed by independent consultants, regulatory agencies and potentially responsible third parties. Accordingly, our estimates may change based on future developments including new or changes in environmental laws or policies, a difference in costs required to complete anticipated actions from estimates provided, future findings of investigation or remediation actions, or alteration to the expected remediation plans. It is our policy to realize a change in estimates once it becomes probable and can be reasonably estimated. In determining our accruals, we do not discount environmental or other legal accruals and do not reduce them by anticipated insurance recoveries. We do take into account third-party indemnification from financially viable parties in determining our accruals where there is no dispute regarding the right to indemnification. While we believe that our accruals related to environmental, litigation and claims are sufficient and that these items and our rights to available insurance and indemnity will be resolved without material adverse effect on our financial position, results of operations and liquidity, individually or in the aggregate, we cannot assure you that our accruals and right to indemnity and insurance will be sufficient or that these items will be resolved without a material adverse effect on our financial position, results of operations and liquidity, individually or in the aggregate.

*Pending Litigation* — In October 2002, one of our subsidiaries filed a patent infringement lawsuit against Microsoft Corporation, in the United States District Court for the Eastern District of Virginia, Richmond Division. We believe that we should ultimately prevail on this pending patent infringement claim. Trial is presently set for November 3, 2003. No assurances can be made as to the final timing and outcome of any litigation.

On or about October 29, 2001, we were served with a complaint by VSI Holdings, Inc., or VSI, in the 6th Judicial Circuit Court of the State of Michigan seeking enforcement of a merger agreement that we had terminated. In its complaint, VSI asked the court to require us to complete the \$197.0 acquisition of VSI, and/or award damages to VSI and its shareholders. We do not believe the suit has merit and are defending the claim vigorously. On December 26, 2001, we filed our answer denying VSI's allegations, raising affirmative defenses and asserting a counterclaim against VSI for breach of contract. On November 8, 2002, VSI filed a voluntary petition for bankruptcy protection under Chapter 11 of the US Bankruptcy Code. On January 8, 2003, the litigation was removed to the federal Bankruptcy Court, which thereafter transferred the matter to the US District Court in Detroit. Pretrial activities are ongoing in the US District Court, and are expected to continue well into 2004. Because no reasonable projections can be made as to the final timing and outcome of the litigation, no gain or loss has been recorded. While we believe that we should ultimately prevail on the

pending litigation claim with VSI, there can be no assurance that we will be successful in the litigation, and if we are not successful, the outcome could have a material adverse effect on our financial condition and results of operations.

*Pension Plans* — The funded status of our pension plans is dependent upon many factors, including returns on invested assets and the level of market interest rates. The dramatic declines in the performance of the U.S. financial markets during 2002 combined with the historic lows in long-term interest rates experienced in 2002, resulted in a \$220.0 underfunded status for our pension plans at December 31, 2002. Our German pension plans account for \$46.6 of the underfunded status at December 31, 2002, as plans in Germany are typically not funded in accordance with local regulations. The updated measurement of the plans' funded status will be determined in the fourth quarter of 2003 and will be affected by the performance of U.S. financial markets, performance of plan assets, and the level of market interest rates at December 31, 2003. Regardless of the outcome, at this time we do not expect to make any regulatory mandated plan contributions for our primary domestic pension plans in 2003. In the first nine months of 2003, we recorded net pension income of \$4.2 compared to \$20.2 in the first nine months of 2002. There can be no assurance that future periods will include similar net pension income or that regulatory mandated plan contributions would not be required.

In accordance with accounting rules, when the accumulated benefit obligation of a pension plan exceeds the plan assets, a minimum pension liability must be recognized. As a result of the decline in the funded status of our pension plans during 2002, we were required to record an adjustment to increase our minimum pension liability at December 31, 2002. This adjustment also required the elimination of the pension asset previously recorded as a result of the historical overfunded position of our pension plans. We recorded the \$226.8 non-cash, non-income statement adjustment, net of tax, at December 31, 2002 as a component of accumulated other comprehensive loss in the Consolidated Statement of Shareholders' Equity. Based on economic factors existing at September 30, 2003, primarily long-term interest rates, it is possible that we may have to increase our minimum pension liability at December 31, 2003, by recording a non-cash, non-income statement adjustment to Shareholders' Equity which is estimated not to exceed \$45.0 after-tax.

*Employment* — At September 30, 2003, we had approximately 22,700 employees. Approximately 3,700 employees are represented by 18 domestic collective bargaining units. In addition, we have various foreign collective labor arrangements. While we generally have experienced satisfactory labor relations at our various locations, we are subject to potential work stoppages, union negotiations and other potential labor disputes. In the first nine months of 2003, we recorded approximately \$2.0 of incremental security and consulting costs associated with a labor contract dispute affecting 117 employees at our aerospace components business. This labor dispute, which began in July 2002, was resolved in the first quarter of this year.

*Share Repurchases* — During the first nine months of 2003, and through October 27, 2003, we repurchased 5.1 shares of our common stock on the open market, for cash of \$195.4. We are subject to various restrictions under our senior secured credit agreement and senior note indenture, which limit our capacity to repurchase our stock for cash. Under the most restrictive covenant, which is presently in our senior note indenture, our available capacity is \$127.9 as of September 30, 2003. See the previous section on indebtedness for a more complete description of the restrictions that our debt instruments place on our ability to repurchase our common stock.

*Significance of Goodwill and Intangibles* — We had goodwill of \$2,759.3, net intangible assets of \$581.0 and shareholders' equity of \$1,728.6 at September 30, 2003. In accordance with SFAS No. 142, we amortize our definite lived intangible assets on a straight-line basis over lives ranging from 3 to 16 years. There can be no assurance that circumstances will not change in the future that will affect the useful lives or the carrying value of our goodwill and intangible assets. In accordance with our policy, we conduct our annual impairment testing of goodwill and indefinite-lived intangibles in connection with our long-range forecasting process. In addition, goodwill and indefinite-lived intangibles are reviewed for impairment more frequently if impairment indicators arise. Intangible assets that are subject to amortization are reviewed for impairment in accordance with the provisions of SFAS No. 144. Consistent with the requirements of SFAS No. 142, the fair values of our reporting units were based on discounted cash flow projections that are believed to be reasonable under current and forecasted circumstances, the results of which form the basis for making judgments about the carrying values of the reported net assets of our reporting units. Many of our businesses closely follow changes in the industries and end-markets that they serve. Accordingly, estimates and judgments that affect the future cash flow projections including principal methods of competition such as volume, price, service, product performance and technical innovations are considered. Actual results may differ from these estimates under different assumptions or conditions. In addition, we continue to monitor impairment indicators in the industries and markets with cyclical demand and pricing behavior including power systems, security and guard services, hydraulic power tools, and telecommunications.

#### **Forward-looking Statements**

Some of the statements in this document and any documents incorporated by reference constitute "forward-looking statements" within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our businesses or our industries' actual results, levels of activity, performance or achievements to be materially different from those expressed or

implied by any forward-looking statements. Such statements include, in particular, statements about our plans, strategies, prospects, changes and trends in our business and the markets in which we operate under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “could,” “would,” “should,” “expect,” “plan,” “anticipate,” “intend,” “believe,” “estimate,” “predict,” “potential” or “continue” or the negative of those terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially because of market conditions in our industries or other factors. All of the forward-looking statements are qualified in their entirety by reference to the factors discussed in our Annual Report on Form 10-K, as amended, under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Factors That May Affect Future Results” and in any subsequent filing, as well as any documents incorporated by reference that describe risks and factors that could cause results to differ materially from those projected in these forward-looking statements.

We caution you that these risk factors may not be exhaustive. We operate in a continually changing business environment and frequently enter into new businesses and product lines. We cannot predict these new risk factors, and we cannot assess the impact, if any, of these new risk factors on our businesses or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those projected in any forward-looking statements. Accordingly, you should not rely on forward-looking statements as a prediction of actual results. In addition, our estimates of future operating results are based on our current complement of businesses, which is constantly subject to change as we implement our “fix, sell or grow” strategy.

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

Management does not believe our exposure to market risk has significantly changed since December 31, 2002 and does not believe that such risks will result in significant adverse impacts to our financial condition or results of operations.

### **ITEM 4. Controls and Procedures**

SPX management, including the Chief Executive Officer and Chief Financial Officer, have conducted an evaluation of the effectiveness of disclosure controls and procedures, pursuant to Exchange Act Rule 13a-15(b), as of September 30, 2003. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective in ensuring that all material information required to be filed in this quarterly report has been made known to them in a timely fashion and no changes are required at this time.

In connection with the evaluation by SPX management, including the Chief Executive Officer and Chief Financial Officer, of our internal control over financial reporting, pursuant to Exchange Act Rule 13a-15(d), no changes during the quarter ended September 30, 2003 were identified that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II — OTHER INFORMATION**

### **ITEM 1. Legal Proceedings**

Numerous claims, complaints and proceedings arising in the ordinary course of business, including but not limited to those relating to environmental matters, competitive issues, contract issues, intellectual property matters, personal injury and product liability claims, and workers’ compensation have been filed or are pending against us and certain of our subsidiaries. Additionally, we may become subject to significant claims of which we are unaware currently or the claims that we are aware of may result in our incurring a significantly greater liability than we anticipate. This may also be true in connection with past or future acquisitions. While we maintain property, cargo, auto, product, general liability, and directors’ and officers’ liability insurance and have acquired rights under similar policies in connection with our acquisitions that we believe cover a portion of these claims, this insurance may be insufficient or unavailable to protect us against potential loss exposures. In addition, we have been increasing our self-insurance limits over the past several years. While we believe we are entitled to indemnification from third parties for some of these claims, these rights may be insufficient or unavailable to protect us against potential loss exposures.

In our opinion, these matters are either without merit or are of a kind that should not have a material adverse effect individually or in the aggregate on our financial position, results of operations, or cash flows. However, we cannot assure you that recoveries from insurance or indemnification claims will be available or that any of these claims or other matters will not have a material adverse effect on our financial position, results of operations or cash flows.

On or about October 29, 2001, we were served with a complaint by VSI Holdings, Inc., or VSI, in the 6th Judicial Circuit Court of the State of Michigan seeking enforcement of a merger agreement that we had terminated. In its complaint, VSI asked the court to require us to complete the \$197.0 acquisition of VSI, and/or award damages to VSI and its shareholders. We do not believe the suit

has merit and are defending the claim vigorously. On December 26, 2001, we filed our answer denying VSI's allegations, raising affirmative defenses and asserting a counterclaim against VSI for breach of contract. On November 8, 2002, VSI filed a voluntary petition for bankruptcy protection under Chapter 11 of the US Bankruptcy Code. On January 8, 2003, the litigation was removed to the federal Bankruptcy Court, which thereafter transferred the matter to the US District Court in Detroit. Pretrial activities are ongoing in the US District Court, and are expected to continue well into 2004. Because no reasonable projections can be made as to the final timing and outcome of the litigation, no gain or loss has been recorded. While we believe that we should ultimately prevail on the pending litigation claim with VSI, there can be no assurance that we will be successful in the litigation, and if we are not successful, the outcome could have a material adverse effect on our financial condition and results of operations.

On September 19, 2002, a pH meter malfunction at our facility in Stockton, California resulted in the release of caustic into the Stockton Diverting Canal and adverse impacts on local fish. We have received a notice of violation in connection with this incident but no fine has been proposed. However, based on discussions with the enforcement authorities, we do not believe the fine for this incident will be material.

**ITEM 4. Submission of Matters to a Vote of Security Holders**

NONE

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

(a) Exhibits

- 2.1 — Merger Agreement, dated March 10, 2001 between SPX Corporation and United Dominion Industries Limited, incorporated herein by reference from our Current Report on Form 8-K filed on March 15, 2001 (file no. 1-6948).
- 3.1 — Restated Certificate of Incorporation, as amended, incorporated herein by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2002 (file no. 1-6948).
- 3.2 — Amended and Restated By-Laws, incorporated herein by reference from our Quarterly Report on Form 10-Q for the quarter ended March 31, 2003 (file no. 1-6948).
- 4.1 — Indenture between SPX Corporation and The Chase Manhattan Bank, dated as of February 6, 2001, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-56364) filed on February 28, 2001.
- 4.2 — Form of Liquid Yield Option (TM) Note due 2021 (Zero Coupon-Senior), incorporated herein by reference from our Form S-3 Registration Statement (No. 333-56364) filed on February 28, 2001.
- 4.3 — Registration Rights Agreement dated as of February 6, 2001, by and between SPX Corporation and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-56364) filed on February 28, 2001.
- 4.4 — Rights Agreement, dated as of June 25, 1996 between SPX Corporation and The Bank of New York, as Rights Agent, relating to Rights to purchase preferred stock under certain circumstances, incorporated herein by reference from our Registration Statement on Form 8-A filed on June 26, 1996 (file no. 1-6948).
- 4.5 — Amendment No. 1 to Rights Agreement, effective October 22, 1997, between SPX Corporation and The Bank of New York, incorporated herein by reference from our Registration Statement on Form 8-A filed on January 9, 1998 (file no. 1-6948).
- 4.6 — Indenture between SPX Corporation and The Chase Manhattan Bank, dated as of May 9, 2001, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68648) filed on August 29, 2001.
- 4.7 — Form of Liquid Yield Option(TM) Note due 2021 (Zero Coupon-Senior), incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68648) filed on August 29, 2001.

- 4.8 — Registration Rights Agreement dated as of May 9, 2001, by and between SPX Corporation and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68648) filed on August 29, 2001.
- 4.9 — Form of Senior Indenture, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68652) filed on August 29, 2001.
- 4.10 — Form of Subordinated Indenture, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68652) filed on August 29, 2001.
- 4.11 — Form of Debt Security, incorporated herein by reference from our Form S-3 Registration Statement (No. 333-68652) filed on August 29, 2001.
- 4.12 — Registration Agreement, dated as of April 23, 1987, among GCA Corporation, the banks and insurance companies set forth therein and Carl Zeiss, Inc., incorporated herein by reference from our Form S-3 Registration Statement (No. 333-76978) filed on January 18, 2002.
- 4.13 — Registration Agreement, dated as of September 1, 1987, between GCA Corporation and Carl Zeiss, Inc., incorporated herein by reference from our Form S-3 Registration Statement (No. 333-76978) filed on January 18, 2002.
- 4.14 — Amendment No. 2 to Rights Agreement dated as of June 26, 2002, incorporated herein by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2002 (file no. 1-6948).
- 4.15 — Indenture between SPX Corporation and JPMorgan Chase Bank, as Trustee, dated as of December 27, 2002, incorporated herein by reference from our Current Report on Form 8-K filed on January 3, 2003 (file no. 1-6948).
- 4.16 — First Supplemental Indenture between SPX Corporation and JPMorgan Chase Bank, as Trustee, dated as of December 27, 2002, incorporated herein by reference from our Current Report on Form 8-K filed on January 3, 2003 (file no. 1-6948).
- 4.17 — Second Supplemental Indenture between SPX Corporation and JPMorgan Chase Bank, as Trustee, dated as of June 16, 2003, incorporated herein by reference from our Current Report on Form 8-K filed on June 18, 2003 (file no. 1-6948).
- 4.18 — Copies of the instruments with respect to our other long-term debt are available to the Securities and Exchange Commission upon request.
- 10.1 — Sixth Amended and Restated Credit Agreement dated as of August 18, 2003.
- 31.1 — Rule 13a-14(a) Certifications.
- 32.1 — Section 1350 Certifications.

(b) Reports on Form 8-K

No reports on Form 8-K were filed during the quarter covered by this report; however, on July 28, 2003, we furnished under Item 12 of Form 8-K our press release dated July 28, 2003. This press release contained our second quarter 2003 earnings information.

**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.

**SPX CORPORATION (Registrant)**

Date: October 27, 2003

By /s/ JOHN B. BLYSTONE

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**John B. Blystone**  
**Chairman, President and Chief Executive Officer**

Date: October 27, 2003

By /s/ PATRICK J. O'LEARY

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**Patrick J. O'Leary**  
**Vice President Finance,**  
**Treasurer and Chief Financial Officer**

Date: October 27, 2003

By /s/ RONALD L. WINOWIECKI

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**Ronald L. Winowiecki**  
**Corporate Controller and Chief Accounting Officer**

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## INDEX TO EXHIBITS

<u>Item No.</u>	<u>Description</u>
10.1	— Sixth Amended and Restated Credit Agreement dated as of August 18, 2003.
31.1	— Rule 13a - 14(a) Certifications.
32.2	— Section 1350 Certifications.

For exhibits not filed herewith, see Item 6 for exhibits incorporated by reference.



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\$1,810,375,000  
SIXTH AMENDED AND RESTATED  
CREDIT AGREEMENT

dated as of October 6, 1998,

as Amended and Restated as of August 18, 2003,

among

SPX CORPORATION,

The Foreign Subsidiary Borrowers Party Hereto,

The Lenders Party Hereto,

THE BANK OF NOVA SCOTIA,

as Syndication Agent,

BANK OF AMERICA, N.A.,

BANK ONE, NA

and

WACHOVIA BANK N.A.

as Documentation Agents,

and

JPMORGAN CHASE BANK,

as Administrative Agent

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J.P. MORGAN SECURITIES INC.,  
as Sole Lead Arranger and Sole Bookrunner

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**EXHIBITS:**

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A-2	Form of Mortgage
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C	Form of Assignment and Acceptance
D-1	Form of Legal Opinion of Fried, Frank, Harris, Shriver & Jacobson
D-2	Form of Legal Opinion of General Counsel of the Parent Borrower
D-3	Matters to be Covered by Foreign Subsidiary Opinion
E	Form of Addendum
F	Form of Exemption Certificate
G	Form of Consent and Confirmation
H	Form of Prepayment Option Notice
I	Form of Borrowing Subsidiary Agreement
J	Form of Borrowing Subsidiary Termination

SIXTH AMENDED AND RESTATED CREDIT AGREEMENT, dated as of October 6, 1998, as amended and restated as of August 18, 2003, among SPX CORPORATION, a Delaware corporation (the "Parent Borrower"), the Foreign Subsidiary Borrowers (as hereinafter defined) party hereto, the Lenders party hereto, THE BANK OF NOVA SCOTIA, as Syndication Agent, BANK OF AMERICA, N.A., BANK ONE, NA and WACHOVIA BANK N.A., as Documentation Agents, and JPMORGAN CHASE BANK, as Administrative Agent.

W I T N E S S E T H :

WHEREAS, the Parent Borrower, as borrower, entered into the Credit Agreement, dated as of October 6, 1998 (the "Original Credit Agreement"), as amended and restated as of February 10, 2000, as amended and restated as of January 31, 2001, as amended and restated as of May 24, 2001, as amended and restated as of July 24, 2002, as amended and restated as of December 27, 2002, and as further amended through the date hereof (the "Existing Credit Agreement"), with the several banks and other financial institutions or entities parties thereto, the documentation agent named therein and JPMorgan Chase Bank (formerly The Chase Manhattan Bank), as administrative agent;

WHEREAS, the parties hereto have agreed to amend and restate the Existing Credit Agreement as provided in this Agreement, which Agreement shall become effective upon the satisfaction of certain conditions precedent set forth in Section 4.1 hereof; and

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities existing under the Existing Credit Agreement and which remain outstanding or evidence repayment of any of such obligations and liabilities and that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the obligations of the Parent Borrower and any Foreign Subsidiary Borrowers outstanding thereunder;

NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree that on the Amendment/Restatement Effective Date (as defined below) the Existing Credit Agreement shall be amended and restated in its entirety as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR": when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Adjusted LIBO Rate": with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next  $\frac{1}{16}$  of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent": JPMorgan Chase Bank, in its capacity as administrative agent for the Lenders hereunder and, unless the context otherwise requires, in its capacity as Collateral Agent; it

being understood that (a) matters concerning Qualified Global Currency Loans (other than Canadian Dollar Loans) will be administered by Chase Manhattan International Limited and therefore all notices concerning such Loans will be required to be given at the London Administrative Office and (b) matters concerning Canadian Dollar Loans will be administered by The Bank of Nova Scotia and therefore all notices concerning such Loans will be required to be given at the Canadian Administrative Office.

“Administrative Office”: the New York Administrative Office, the London Administrative Office or the Canadian Administrative Office, as applicable.

“Administrative Questionnaire”: an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate”: as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Aggregate Available Global Revolving Commitments”: as at any date of determination with respect to all Global Revolving Lenders, an amount in Dollars equal to the Available Global Revolving Commitments of all Global Revolving Lenders on such date.

“Alternate Base Rate”: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus  $\frac{1}{2}$  of 1%. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in respect thereof, the Alternate Base Rate shall be determined without regard to clause (c) of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate, respectively.

“Alternative Currency”: any currency that is freely available, freely transferable and freely convertible into Dollars and in which dealings in deposits are carried on in the London interbank market, provided that such currency is reasonably acceptable to the Administrative Agent and the applicable Issuing Lender.

“Alternative Currency LC Exposure”: at any time, the sum of (a) the Dollar Equivalent of the aggregate undrawn and unexpired amount of all outstanding Alternative Currency Letters of Credit at such time plus (b) the Dollar Equivalent of the aggregate principal amount of all LC Disbursements in respect of Alternative Currency Letters of Credit that have not yet been reimbursed at such time.

“Alternative Currency Letter of Credit”: a Letter of Credit denominated in an Alternative Currency.

“Amendment/Restatement Effective Date”: the date on which the conditions precedent set forth in Section 4.1 shall be satisfied, which date is August 18, 2003.

“Applicable Percentage”: with respect to any Domestic Revolving Lender, the percentage of the total Domestic Revolving Commitments represented by such Lender’s Domestic Revolving Commitment. If the Domestic Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Domestic Revolving Commitments most recently in effect, giving effect to any assignments.

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“Applicable Rate”: with respect to any Loans, for any day, the applicable rate per annum set forth below, based upon the Consolidated Leverage Ratio as of the most recent determination date:

<u>Consolidated Leverage Ratio</u>	<u>Applicable Rate for Eurocurrency Loans that are Revolving Loans, Swingline Loans or Tranche A Term Loans</u>	<u>Applicable Rate for ABR Loans that are Revolving Loans, Swingline Loans or Tranche A Term Loans</u>	<u>Applicable Rate for Eurocurrency Loans that are Tranche B Term Loans</u>	<u>Applicable Rate for ABR Loans that are Tranche B Term Loans</u>	<u>Commitment Fee Rate</u>
Greater than or equal to 3.00 to 1.0	2.25%	1.25%	2.25%	1.25%	0.500%
Greater than or equal to 2.50 to 1.0 and less than 3.00 to 1.0	2.00%	1.00%	2.25%	1.25%	0.425%(1)
Less than 2.50 to 1.0	1.75%	0.75%	2.25%	1.25%	0.375%(2)

For purposes of the foregoing, (a) the Consolidated Leverage Ratio shall be determined as of the end of each fiscal quarter of the Parent Borrower’s fiscal year based upon the Parent Borrower’s consolidated financial statements delivered pursuant to Section 5.1(a) or (b), and (b) each change in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change; provided that (i) subject to clause (ii) below, until the delivery pursuant to Section 5.1(b) of the Parent Borrower’s consolidated financial statements for the fiscal quarter ended September 30, 2003, the Consolidated Leverage Ratio shall be determined as of the end of the Parent Borrower’s fiscal quarter ended June 30, 2003 based upon the Parent Borrower’s financial statements for the period of four consecutive fiscal quarters ended June 30, 2003 delivered to the Administrative Agent prior to the Amendment/Restatement Effective Date, which financial statements shall contain all information and calculations necessary for determining the Consolidated Leverage Ratio as of June 30, 2003, and (ii) the Consolidated Leverage Ratio shall be deemed to be greater than or equal to 3.00 to 1.0 (A) at any time that an Event of Default has occurred and is continuing or (B) at the option of the Administrative Agent or at the request of the Required Lenders, if the Parent Borrower fails to deliver the consolidated financial statements required to be delivered by it pursuant to Section 5.1(a) or (b), during the period from the expiration of the time for delivery thereof until such consolidated financial statements are delivered.

For purposes of the foregoing, (1) the Commitment Fee Rate applicable where the Consolidated Leverage Ratio is greater than or equal to 2.50 to 1.0 and less than 3.00 to 1.0 shall be reduced from 0.425% to 0.300% during any period when the Utilization Percentage for such period is greater than or equal to 50% and (2) the Commitment Fee Rate applicable where the Consolidated Leverage Ratio is less than 2.50 to 1.0 shall be reduced from 0.375% to 0.250% during any period when the Utilization Percentage for such period is greater than or equal to 50%.

**“Assessment Rate”**: for any day, the annual assessment rate in effect on such day that is payable by a member of the Bank Insurance Fund classified as “well-capitalized” and within supervisory subgroup “B” (or a comparable successor risk classification) within the meaning of 12 C.F.R. Part 327 (or any successor provision) to the Federal Deposit Insurance Corporation for insurance by such Corporation of time deposits made in Dollars at the offices of such member in the United States; provided that if, as a result of any change in any law, rule or regulation, it is no longer possible to determine the Assessment Rate as aforesaid, then the Assessment Rate shall be such annual rate as shall be determined by the Administrative Agent to be representative of the cost of such insurance to the Lenders.

**“Asset Swap”**: the exchange by the Parent Borrower or a Subsidiary of any portion of its assets for other assets which, or Capital Stock of a Person all or substantially all of the assets of which, are of a type used in the business of the Parent Borrower or in a related business, or a combination of any such assets or Capital Stock of such a Person and cash or Permitted Investments, provided that in the case of any such exchange involving the exchange of assets having an aggregate fair market value in excess of \$100,000,000, the Board of Directors of the Parent Borrower shall have determined in good faith that the aggregate fair market value of the assets and other consideration received in connection therewith shall at least equal the aggregate fair market value of the assets so exchanged.

**“Assignment and Acceptance”**: an assignment and acceptance in the form of Exhibit C or any other form approved by the Administrative Agent.

**“Attributable Debt”**: in respect of a Sale/Leaseback Transaction, as at the time of determination, the present value (discounted at the interest rate assumed in making calculations in accordance with FAS 13) of the total obligations of the Parent Borrower or the relevant Subsidiary, as lessee, for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended).

**“Available Global Revolving Commitments”**: as at any date of determination with respect to any Global Revolving Lender, an amount in Dollars equal to the excess, if any, of (a) the amount of such Lender’s Global Revolving Commitment in effect on such date over (b) the Global Revolving Exposure of such Lender on such date.

**“Base CD Rate”**: the sum of (a) the Three-Month Secondary CD Rate multiplied by the Statutory Reserve Rate plus (b) the Assessment Rate.

**“Board”**: the Board of Governors of the Federal Reserve System of the United States of America.

**“BOMAG”**: BOMAG Holding, Inc., a Delaware corporation.

**“Borrowers”**: the collective reference to the Parent Borrower and the Foreign Subsidiary Borrowers.

**“Borrowing”**: (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

“Borrowing Request”: a request by the relevant Borrower for a Borrowing in accordance with Section 2.3.

“Borrowing Subsidiary Agreement”: a Borrowing Subsidiary Agreement, substantially in the form of Exhibit I.

“Borrowing Subsidiary Termination”: a Borrowing Subsidiary Termination, substantially in the form of Exhibit J.

“Business Day”: any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or (except in the case of Dollar-denominated Loans) London are authorized or required by law to remain closed; provided that (a) with respect to any borrowings, disbursements and payments in respect of and calculations, interest rates and Interest Periods pertaining to Eurocurrency Loans, such day is also a day on which banks are open for general business in the principal financial center of the country of the relevant currency and (b) with respect to notices and determinations in connection with, and payments of principal and interest on, Loans denominated in Euros, such day is also a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System (TARGET) (or, if such clearing system ceases to be operative, such other clearing system (if any) determined by the Administrative Agent to be a suitable replacement) is open for settlement of payment in Euros.

“Calculation Date”: two Business Days prior to the last Business Day of each calendar quarter (or any other day selected by the Administrative Agent (each, an “Optional Calculation Date”)); provided that each date that is on or about the date of any borrowing request or rollover request with respect to any Qualified Global Currency Loan or of any issuance or maturity extension of a Letter of Credit denominated in an Alternative Currency shall also be a “Calculation Date” with respect to the relevant Qualified Global Currency or Alternative Currency, as the case may be.

“Canadian Administrative Office”: as defined in Schedule 1.7.

“Canadian B/A”: a Bankers’ Acceptance as defined in Schedule 1.7.

“Canadian Commitment”: as defined in Schedule 1.7.

“Canadian Contract Period”: with respect to any Canadian B/A, the term thereof pursuant to subsection 2.3(b)(4) of Schedule 1.7.

“Canadian Lender”: as defined in Schedule 1.7.

“Canadian Dollar Loan”: a C\$ Loan as defined in Schedule 1.7.

“Canadian dollars”: lawful currency of Canada.

“Canadian Tranche A Term Loans”: as defined in Section 2.23.

“Capital Lease Obligations”: with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Capital Stock”: shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any and all warrants, rights or options to purchase any of the foregoing (other than any Indebtedness convertible into Capital Stock, until such conversion).

“Change in Law”: (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Lender (or, for purposes of Section 2.16(b), by any lending office of such Lender or Issuing Lender or by such Lender’s or Issuing Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Change of Control”: (a) the acquisition of ownership, directly or indirectly, beneficially, by any “person” or “group” (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of Capital Stock representing more than 35% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Capital Stock of the Parent Borrower; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Parent Borrower by Persons who were neither (i) nominated by the board of directors of the Parent Borrower nor (ii) appointed by directors so nominated; or (c) the occurrence of a “Change of Control” (or any comparable concept) as defined in the Senior Note Indenture, any Subordinated Debt Documents, any LYONs Documents or any Other Permitted Debt Documents.

“Class”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Domestic Revolving Loans, Global Revolving Loans, Tranche A Term Loans, Tranche B Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Domestic Revolving Commitment, a Global Revolving Commitment or a Tranche B Incremental Commitment.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“Collateral Agent”: JPMorgan Chase Bank, in its capacities as (a) collateral agent under the Guarantee and Collateral Agreement for the Lenders, (b) collateral agent under the Mortgages, and (c) collateral agent under any other Security Document.

“Collateral Date”: each date on which, pursuant to Section 5.1, the Parent Borrower delivers annual financial statements in respect of its fiscal year or quarterly financial statements in respect of the second quarter of its fiscal year.

“Commitment”: a Domestic Revolving Commitment, a Global Revolving Commitment, a Tranche B Incremental Commitment or any combination thereof (as the context requires).

“Consent and Confirmation”: the Consent and Confirmation, substantially in the form of Exhibit G, to be executed and delivered by the Parent Borrower and the Subsidiary Guarantors on the Amendment/Restatement Effective Date.

“Consideration”: in connection with any acquisition or Investment, the consideration paid by the Parent Borrower or any of its Subsidiaries in connection therewith (including consideration in the form of issuance of Capital Stock of the Parent Borrower or any Subsidiary and assumption of Indebtedness but excluding, for the purposes of any calculation made pursuant to Section 6.5, consideration in the form of issuance of Capital Stock of the Parent Borrower).

“Consolidated EBITDA”: for any period, Consolidated Net Income for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) interest expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness (including the Loans, letters of credit, bankers’ acceptances and net costs under Hedging Agreements), (c) depreciation and amortization expense, (d) amortization or write-off of intangibles (including, but not limited to, goodwill) and organization costs, (e) any extraordinary or non-recurring non-cash expenses or non-cash losses, provided that in the event that the Parent Borrower or any Subsidiary makes any cash payment in respect of any such extraordinary or non-recurring non-cash expense, such cash payment shall be deducted from Consolidated EBITDA in the period in which such cash payment is made, (f) losses on Dispositions of assets outside of the ordinary course of business, (g) extraordinary or non-recurring cash charges resulting from severance, integration and other adjustments made as a result of Permitted Acquisitions, provided that the amounts referred to in this clause (g) reported in any fiscal period ending after June 30, 2003 shall not, in the aggregate during the term of this Agreement, exceed \$40,000,000 on an after-tax basis, and (h) non-cash compensation expenses, or other non-cash expenses or charges, arising from the sale of stock, the granting of stock options, the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution or change of any such stock, stock option, stock appreciation rights or similar arrangements), and minus, to the extent included in the statement of such Consolidated Net Income for such period, (a) any extraordinary or non-recurring non-cash income or non-cash gains and (b) gains on Dispositions of assets outside of the ordinary course of business, all as determined on a consolidated basis; provided that in determining Consolidated EBITDA for such period, the cumulative effect of any change in accounting principles (effected either through cumulative effect adjustment or a retroactive application) shall be excluded. For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each, a “Reference Period”) pursuant to any determination of the Consolidated Leverage Ratio, if during such Reference Period (or, in the case of pro forma calculations, during the period from the last day of such Reference Period to and including the date as of which such calculation is made) the Parent Borrower or any Subsidiary shall have made a Material Disposition or Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Disposition or Material Acquisition occurred on the first day of such Reference Period (with the Reference Period for the purposes of pro forma calculations being the most recent period of four consecutive fiscal quarters for which the relevant financial information is available), without giving effect to cost savings. As used in this definition, “Material Acquisition” means any acquisition of property or series of related acquisitions of property that (a) constitutes assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the common stock of a Person and (b) involves Consideration in excess of \$25,000,000; and “Material Disposition” means any Disposition of property or series of related Dispositions of property that (a) involves assets comprising all or substantially all of an operating unit of a business or constitutes all or substantially all of the common stock of a Subsidiary and (b) yields gross proceeds to the Parent Borrower or any of its Subsidiaries in excess of \$25,000,000.

“Consolidated Interest Coverage Ratio”: for any period, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Interest Expense for such period.

**“Consolidated Interest Expense”**: for any period, the sum of (a) total cash interest expense (including that attributable to Capital Lease Obligations) of the Parent Borrower and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Parent Borrower and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs or net cash income under Hedging Agreements in respect of such Indebtedness to the extent such net cash costs or net cash income, as the case may be, are allocable to such period in accordance with GAAP), (b) total dividend payments made by the Parent Borrower or any of its Subsidiaries to any Person (other than the Parent Borrower or any Wholly Owned Subsidiary Guarantor) during such period in respect of preferred Capital Stock and (c) to the extent not otherwise included in “interest expense” (or any like caption) on a consolidated income statement of the Parent Borrower and its Subsidiaries for such period, any other discounts, fees and expenses comparable to or in the nature of interest under any Qualified Receivables Transaction.

**“Consolidated Leverage Ratio”**: as at the last day of any period, the ratio of (a) Consolidated Total Debt on such day to (b) Consolidated EBITDA for such period.

**“Consolidated Net Income”**: for any period, the consolidated net income (or loss) of the Parent Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Parent Borrower or is merged into or consolidated with the Parent Borrower or any of its Subsidiaries and (b) the income (or deficit) of any Person (other than a Subsidiary of the Parent Borrower) in which the Parent Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Parent Borrower or such Subsidiary in the form of dividends or similar distributions; provided further that, solely for purposes of clauses (e) and (g) of Section 6.8, there shall be excluded (i) (A) any gain or loss realized upon the sale or other disposition of any property, plant or equipment of the Parent Borrower or its consolidated Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise Disposed of in the ordinary course of business, (B) any gain or loss recorded in connection with the designation of a discontinued operation (exclusive of its operating income or loss) and (C) any gain or loss realized upon the sale or other disposition of any Capital Stock of any Person, (ii) any extraordinary gain or loss, (iii) the cumulative effect of a change in accounting principles (effected either through cumulative effect adjustment or a retroactive application), (iv) any restructuring or special charges appearing on the face of the statement of operations of the Parent Borrower, (v) any non-cash compensation charges, or other non-cash expenses or charges, arising from the grant of or issuance or repricing of stock, stock options or other equity-based awards or any amendment, modification, substitution or change of any such stock, stock options or other equity-based awards and (vi) any increase in the cost of sales or other write-offs or other increased costs resulting from purchase accounting in relation to any acquisitions occurring after the Amendment/Restatement Effective Date, net of taxes.

**“Consolidated Senior Debt”**: all Consolidated Total Debt other than Subordinated Debt.

**“Consolidated Senior Leverage Ratio”**: as of the last day of any period, the ratio of (a) Consolidated Senior Debt on such day to (b) Consolidated EBITDA for such period.

**“Consolidated Total Debt”**: at any date, the sum of (a) the aggregate principal amount of all Indebtedness of the Parent Borrower and its Subsidiaries at such date (excluding the face amount of undrawn letters of credit), determined on a consolidated basis in accordance with GAAP, calculated net of the amount of cash and cash equivalents, in excess of \$50,000,000, that would (in conformity with GAAP) be set forth on a consolidated balance sheet of the Parent Borrower and its Subsidiaries for such date, provided that the netting of such cash and cash equivalent amounts shall not be used in calculating the Consolidated Leverage Ratio for purposes of determining the Applicable Rate for Tranche B Term

Loans plus (b) without duplication of amounts included in clause (a) above, an amount equal to the aggregate amount of Receivables Transaction Attributed Indebtedness associated with such financing, in each case pursuant to any Receivables securitization (including any Qualified Receivables Transaction and any European Receivables Securitization) which is outstanding at such date.

“Contractual Obligation”: 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”: 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.

“Default”: any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default (including, in any event, a “Default” under and as defined in the Senior Note Indenture, any Subordinated Debt Documents or any Other Permitted Debt Documents).

“Determination Date”: each date that is two Business Days after any Calculation Date or Optional Calculation Date.

“Disclosed Matters”: the matters disclosed in Schedule 3.4.

“Disposition”: with respect to any property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. “Dispose” and “Disposed of” have meanings correlative thereto.

“Documentation Agents”: the collective reference to Bank of America, N.A., Bank One, NA and Wachovia Bank N.A., in their capacity as documentation agents.

“Dollar Equivalent”: on any date of determination, (a) for the purposes of determining compliance with Article VI or the existence of an Event of Default under Article VII (other than for the purpose of determining amounts outstanding hereunder, in which case clause (b) below shall govern), with respect to any amount denominated in a currency other than Dollars, the equivalent in Dollars of such amount, determined in good faith by the Parent Borrower in a manner consistent with the way such amount is or would be reflected on the Parent Borrower’s audited consolidated financial statements for the fiscal year in which such determination is made and (b) with respect to any amount hereunder denominated in an Alternative Currency or a Qualified Global Currency, the amount of Dollars that may be purchased with such amount of such currency at the Exchange Rate (determined as of the most recent Calculation Date) with respect to such currency on such date.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Revolving Availability Period”: the period from and including December 27, 2002 to but excluding the earlier of the Domestic Revolving Maturity Date and the date of termination of the Domestic Revolving Commitments.

“Domestic Revolving Commitment”: with respect to each Lender, the commitment, if any, of such Lender to make Domestic Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, as such commitment may be changed from time to time pursuant to this Agreement. The amount of each Lender’s Domestic Revolving Commitment as of the

Amendment/Restatement Effective Date is set forth on Schedule 1.1A, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Domestic Revolving Commitment, as applicable. The aggregate amount of the Domestic Revolving Commitments is \$400,000,000 as of the Amendment/Restatement Effective Date.

“Domestic Revolving Exposure”: with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Domestic Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Domestic Revolving Facility”: as defined in the definition of Facility.

“Domestic Revolving Lender”: a Lender with a Domestic Revolving Commitment or with Domestic Revolving Exposure.

“Domestic Revolving Loan”: a Loan made pursuant to Section 2.1(a)(ii).

“Domestic Revolving Maturity Date”: March 31, 2008.

“Domestic Subsidiary”: any Subsidiary other than a Foreign Subsidiary.

“Effective Date”: the date on which the conditions specified in Section 4.1 of the Original Credit Agreement were satisfied, which date was October 6, 1998.

“Emerson JV”: EGS LLC.

“EMU”: Economic and Monetary Union as contemplated in the Treaty.

“Environmental Laws”: all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“Environmental Liability”: any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Parent Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate”: any trade or business (whether or not incorporated) that, together with the Parent Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event”: (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice



period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Parent Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Parent Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Parent Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Parent Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Euro”: the single currency of Participating Member States introduced in accordance with the provisions of Article 109(1)4 of the Treaty and, in respect of all payments to be made under this Agreement in Euros, means immediately available, freely transferable funds.

“Eurocurrency”: when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“European Receivables Securitization”: the collective reference to (a) the Receivables securitization facility pursuant to which one or more German Subsidiaries of BOMAG have agreed to sell, on a revolving basis without recourse, certain qualified receivables on substantially the same terms as were in effect on December 27, 2002 and (b) Receivables securitization facilities with European Foreign Subsidiaries having substantially the same terms as those applicable to the Receivables securitization facility described in clause (a) above.

“Event of Default”: as defined in Article VII.

“Exchange Rate”: on any day, with respect to any Alternative Currency or Qualified Global Currency, the rate at which such Alternative Currency or Qualified Global Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m., London time, on such day on the applicable Reuters World Spot Page. In the event that any such rate does not appear on any Reuters World Spot Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates reasonably selected by the Administrative Agent in consultation with the Parent Borrower for such purpose or, at the discretion of the Administrative Agent in consultation with the Parent Borrower, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such Alternative Currency are then being conducted, at or about 11:00 a.m., local time, on such day for the purchase of the applicable Alternative Currency for delivery two Business Days later, provided that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any other reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Taxes”: with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch

profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Borrower is located, (c) in the case of any Borrowing by the Parent Borrower or any Foreign Subsidiary Borrower, with respect to any Lender (other than an assignee pursuant to a request by a Borrower under Section 2.20(b)), any withholding tax imposed by the jurisdiction in which such Borrower is located that is (i) imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement or (ii) is attributable to such Lender's failure to comply with Section 2.18(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from any Borrower with respect to such withholding tax pursuant to Section 2.18(a) and (d) United States withholding taxes imposed other than as a result of a Change in Law (it being understood that for this purpose the term Change in Law shall not include final Treasury regulations under Section 1441 of the Code becoming effective).

“Existing Credit Agreement”: as defined in the recitals hereto.

“Existing Letters of Credit”: as defined in Section 2.5(a).

“Facility”: each of (a) the Tranche A Term Loans made or converted under the Existing Credit Agreement (the “Tranche A Term Facility”), (b) the Tranche B Term Loans made or converted under the Existing Credit Agreement, the Tranche B Incremental Commitments and the Tranche B Incremental Term Loans made hereunder (the “Tranche B Term Facility”), (c) the Domestic Revolving Commitments and the extensions of credit made hereunder (the “Domestic Revolving Facility”) and (d) the Global Revolving Commitments and the Global Revolving Loans made hereunder (the “Global Revolving Facility”) and, together with the Domestic Revolving Facility, the “Revolving Facility”).

“Federal Funds Effective Rate”: for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financial Officer”: the chief financial officer, principal accounting officer, treasurer or controller of the Parent Borrower.

“Foreign Subsidiary”: any Subsidiary (a) that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia or (b) that is a Foreign Subsidiary Holdco.

“Foreign Subsidiary Borrower”: any Foreign Subsidiary of the Parent Borrower designated as a Foreign Subsidiary Borrower by the Parent Borrower pursuant to Section 2.22 that has not ceased to be a Foreign Subsidiary Borrower pursuant to such Section.

“Foreign Subsidiary Holdco”: any Domestic Subsidiary that has no material assets other than the Capital Stock of one or more Foreign Subsidiaries, and other assets relating to an ownership interest in any such Capital Stock.

“Foreign Subsidiary Opinion”: with respect to any Foreign Subsidiary Borrower, a legal opinion of counsel to such Foreign Subsidiary Borrower addressed to the Administrative Agent and the Lenders covering the matters set forth on Exhibit D-3, with such assumptions, qualifications and deviations therefrom as the Administrative Agent shall approve (such approval not to be unreasonably withheld).

“GAAP”: generally accepted accounting principles in the United States of America.

“Global Revolving Availability Period”: the period from and including December 27, 2002 to but excluding the earlier of the Global Revolving Maturity Date and the date of termination of the Global Revolving Commitments.

“Global Revolving Facility”: as defined in the definition of Facility.

“Global Revolving Commitment”: with respect to each Lender, the commitment, if any, of such Lender to make Global Revolving Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Global Revolving Exposure hereunder, as such commitment may be changed from time to time pursuant to this Agreement. The amount of each Lender’s Global Revolving Commitment as of the Amendment/Restatement Effective Date is set forth on Schedule 1.1A, or in the Assignment and Acceptance pursuant to which such Lender shall have assumed its Global Revolving Commitment, as applicable. The aggregate amount of the Global Revolving Commitments is \$100,000,000 as of the Amendment/Restatement Effective Date.

“Global Revolving Exposure”: with respect to any Lender at any time, the sum of (a) the aggregate outstanding principal amount of such Lender’s Global Revolving Loans at such time that are denominated in Dollars plus (b) the Dollar Equivalent at such time of the aggregate outstanding principal amount of such Lender’s Global Revolving Loans at such time that are denominated in Qualified Global Currencies.

“Global Revolving Lender”: a Lender with a Global Revolving Commitment or with Global Revolving Exposure.

“Global Revolving Loan”: a Loan made pursuant to Section 2.1(a)(iii), including Canadian Dollar Loans and any Canadian B/A accepted in accordance with Schedule 1.7.

“Global Revolving Maturity Date”: March 31, 2008.

“Governmental Authority”: any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including, without limitation, any European central bank or other similar agency, authority or regulatory body), any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Guarantee”: with respect to any Person (the “guarantor”), any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of

credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, purchaser or customer arrangements in the ordinary course of business, Standard Securitization Undertakings or “comfort” letters delivered to auditors in connection with statutory audits.

“Guarantee and Collateral Agreement”: the Guarantee and Collateral Agreement, dated as of October 6, 1998, made by the Parent Borrower and the Subsidiary Guarantors in favor of the Collateral Agent, a copy of which is attached as Exhibit A-1, as the same may be amended, supplemented or otherwise modified from time to time.

“Hazardous Materials”: 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.

“Hedging Agreement”: any interest rate agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price swap or hedging arrangement or option.

“Incur”: as defined in Section 6.2. “Incurrence” and “Incurred” shall have correlative meanings.

“Indebtedness”: with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (other than current trade payables Incurred in the ordinary course of business and payable in accordance with customary practices), (d) all obligations of such Person in respect of the deferred purchase price of property or services (other than (i) current trade payables or liabilities for deferred payment for services to employees and former employees, in each case Incurred in the ordinary course of business and payable in accordance with customary practices and (ii) unsecured supplier financing arrangements in respect of current trade payables Incurred in the ordinary course of business, so long as the aggregate amount at any time outstanding that is owed in respect of such supplier financing arrangements does not exceed an amount equal to the current trade payables so financed plus interest (or equivalent), yield, indemnities, fees and expenses in connection therewith), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (j) all preferred and/or redeemable Capital Stock of any Subsidiary of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is six months after the Tranche B Maturity Date, (k) Receivables Transaction Attributed Indebtedness and (l) for the purposes of Section 6.2 only, all obligations of such Person in respect of Hedging Agreements. The Indebtedness of any Person (i) shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor and (ii) shall exclude customer deposits in the ordinary course of business.

“Indemnified Taxes”: Taxes other than Excluded Taxes.

“Information Memorandum”: the Confidential Information Memorandum dated August 2003 relating to the Parent Borrower and the Facilities.

“Interest Election Request”: a request by the relevant Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.7.

“Interest Payment Date”: (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period”: with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the relevant Borrower may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) Tranche B Incremental Term Loans made on the Amendment/Restatement Effective Date may be converted on the date that is three Business Days after the Amendment/Restatement Effective Date from ABR Loans to Eurocurrency Loans having an initial Interest Period ending on September 30, 2003. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investments”: as defined in Section 6.5.

“Issuing Lender”: as the context may require, (a) JPMorgan Chase Bank, with respect to Letters of Credit issued by it, (b) any other Domestic Revolving Lender that becomes an Issuing Lender pursuant to Section 2.5(l), with respect to Letters of Credit issued by it, and (c) any Domestic Revolving Lender that has issued an Existing Letter of Credit, with respect to such Existing Letter of Credit and, in each case its successors in such capacity as provided in Section 2.5(i). Any Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Lender, in which case the term “Issuing Lender” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Judgment Currency”: as defined in Section 9.16.

“Judgment Currency Conversion Rate”: as defined in Section 9.16.

“LC Disbursement”: a payment made by the applicable Issuing Lender pursuant to a Letter of Credit.

“LC Exposure”: at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that

have not yet been reimbursed by or on behalf of the relevant Borrower at such time. The LC Exposure of any Domestic Revolving Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Lender Affiliate”: (a) with respect to any Lender, (i) an Affiliate of such Lender or (ii) any entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or an Affiliate of such Lender and (b) with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Lenders”: the Persons listed on Schedule 1.1A and any other Person that shall have become a party hereto pursuant to an Assignment and Acceptance, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Acceptance. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and each Issuing Lender.

“Letter of Credit”: any letter of credit issued pursuant to this Agreement, including the Existing Letters of Credit.

“LIBO Rate”: with respect to any Eurocurrency Borrowing, for any Interest Period, the rate appearing on the relevant page of the Telerate screen (or any successor to or substitute for such screen, providing rate quotations comparable to those currently provided on such page of such screen, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to deposits in Dollars or the relevant Qualified Global Currency, as the case may be, in the relevant interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for deposits in such currency with a maturity comparable to such Interest Period. If such rate is not available at such time for any reason, and in all cases in the case of sterling-denominated Loans, the “LIBO Rate” with respect to such Eurocurrency Borrowing for such Interest Period shall be the rate at which deposits in the relevant currency of \$5,000,000 (or the appropriate equivalent thereof) and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Lien”: with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan”: any loan made by any Lender pursuant to this Agreement.

“Loan Documents”: this Agreement, the Security Documents, each Borrowing Subsidiary Agreement and each Borrowing Subsidiary Termination.

“Loan Parties”: the Borrowers and the Subsidiary Guarantors.

**“London Administrative Office”**: the Administrative Agent’s office located at 125 London Wall, London, or such other office in London as may be designated by the Administrative Agent by written notice to the Parent Borrower and the Lenders.

**“LYONs”**: the collective reference to (a) the LYONs described in (i) the offering memorandum dated March 10, 2001 and (ii) the offering memorandum dated May 9, 2001 (collectively, the **“LYONs Offering Memoranda”**), (b) the notes issued upon conversion of the LYONs upon the occurrence of a Tax Event (as defined in the LYONs Documents) on the terms described in the LYONs Offering Memoranda and (c) any Indebtedness (other than the Senior Notes) of the Parent Borrower (with Guarantees by Subsidiary Guarantors otherwise permitted by this Agreement) Incurred to refinance any of the foregoing so long as (i) such Indebtedness has no scheduled principal payments (it being acknowledged that any mandatory redemptions or conversions at the option of the holders of the LYONs pursuant to LYONs Put/Conversion Rights are not scheduled principal payments) prior to the date that is six months after the Tranche B Maturity Date and (ii) the terms thereof, taken as a whole, are not materially more restrictive than the Indebtedness being refinanced or are no more restrictive than those contained in this Agreement, in each case as agreed by the Administrative Agent.

**“LYONs Contingent Interest”**: the payment of contingent interest on or after February 1, 2006, as described in the Summary section of the LYONs Offering Memoranda under the caption “Contingent Interest”.

**“LYONs Documents”**: all indentures, instruments, agreements and other documents evidencing or governing the LYONs or providing for any Guarantee or other right in respect thereof.

**“LYONs Offering Memoranda”**: as defined in the definition of LYONs.

**“LYONs Put/Conversion Rights”**: the collective reference to (a) the ability of holders of the LYONs to require purchase of the LYONs through the payment of cash or issuance of common stock or a combination of cash and common stock on specified scheduled dates, as described in the Summary section of the LYONs Offering Memoranda under the caption “Purchase of the LYONs at the Option of the Holder” (or on substantially similar terms on later dates) and (b) the ability of the holders of the LYONs to surrender LYONs for conversion into common stock of the Parent Borrower if specific conditions are satisfied, as described in the Summary section of the LYONs Offering Memoranda under the caption “Conversion Rights” (or on substantially similar terms on later dates).

**“Majority Facility Lenders”**: with respect to any Facility, the holders of more than 50% of the aggregate unpaid principal amount of the Term Loans or Revolving Exposure, as the case may be, outstanding under such Facility (or, in the case of the Revolving Facility, prior to any termination of the Revolving Commitments, the holders of more than 50% of the Revolving Commitments).

**“Material Adverse Effect”**: a material adverse effect on (a) the business, property, operations or condition (financial or otherwise) of the Parent Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform any of their obligations under any Loan Document or (c) the rights of or benefits available to the Lenders under any Loan Document.

**“Material Indebtedness”**: Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements (the amount of such obligations, in the case of Hedging Agreements, to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time), of any one or more of the Parent Borrower and its Subsidiaries in an aggregate principal amount exceeding \$75,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Parent

Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Parent Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

“Material Subsidiary”: (a) any Subsidiary listed on Schedule 1.1B and (b) any other Subsidiary of the Parent Borrower created or acquired after the Amendment/Restatement Effective Date that, together with its Subsidiaries, has aggregate assets (excluding assets that would be eliminated upon consolidation in accordance with GAAP), at the time of determination, in excess of \$50,000,000.

“Moody’s”: Moody’s Investors Service, Inc.

“Mortgage”: a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the obligations of any Loan Party under any Loan Document. Each Mortgage shall be satisfactory in form and substance to the Administrative Agent.

“Mortgaged Property”: each parcel of real property owned by a Loan Party and identified on Schedule 1.1C and the improvements thereto, together with each other parcel of real property and improvements thereto with respect to which a Mortgage is granted to the Administrative Agent or the Collateral Agent.

“Multiemployer Plan”: a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds”: with respect to any event (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a casualty or a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid by the Parent Borrower and the Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a condemnation or similar proceeding), the amount of all payments required to be made by the Parent Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) or to repay any other Contractual Obligation secured by such asset or otherwise subject to mandatory prepayment or repayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by the Parent Borrower and the Subsidiaries (including all taxes paid in connection with the repatriation of the Net Proceeds of a Disposition), and the amount of any reserves established by the Parent Borrower and the Subsidiaries to fund contingent liabilities reasonably estimated to be payable, in each case that are directly attributable to such event (as determined reasonably and in good faith by the chief financial officer of the Parent Borrower).

“New York Administrative Office”: the Administrative Agent’s office located at 270 Park Avenue, New York, New York, or such other office in New York City as may be designated by the Administrative Agent by written notice to the Parent Borrower and the Lenders.

“Obligation Currency”: as defined in Section 9.16.

“Obligations”: the collective reference to the unpaid principal of and interest on the Loans and Reimbursement Obligations and all other obligations and liabilities of the Borrowers (including, without limitation, interest accruing at the then applicable rate provided herein after the maturity of the Loans and Reimbursement Obligations and interest accruing at the then applicable rate provided herein after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Borrower, whether or not a claim for post-filing or post-



petition interest is allowed in such proceeding) to the Administrative Agent or any Lender (or, in the case of any Hedging Agreement, any Lender or any Affiliate of any Lender), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter Incurred, which may arise under, out of, or in connection with, this Agreement, the other Loan Documents, any Letter of Credit, any Hedging Agreement with any Lender or any Affiliate of any Lender or any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by any Borrower pursuant to the terms of any of the foregoing agreements).

“Old Tranche C Term Loans”: Tranche C Term Loans made or converted under (and as defined in) the Existing Credit Agreement.

“Optional Calculation Date”: as defined in the definition of Calculation Date.

“Original Credit Agreement”: as defined in the recitals hereto.

“Other Permitted Debt”: any unsecured Indebtedness Incurred by the Parent Borrower as permitted by Section 6.2(l).

“Other Permitted Debt Documents”: all indentures, instruments, agreements and other documents evidencing or governing Other Permitted Debt or providing for any Guarantee or other right in respect thereof.

“Other Taxes”: any and all present or future stamp or documentary taxes or any other excise charges or similar levies arising from the execution, delivery or enforcement of any Loan Document.

“Parent Borrower”: as defined in the preamble.

“Participant”: as defined in Section 9.4(e).

“Participating Member State”: each state so described in any EMU legislation.

“PBGC”: the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition”: any acquisition by the Parent Borrower or any Subsidiary of all or substantially all of the Capital Stock of, or all or substantially all of the assets of, or of a business, unit or division of, any Person; provided that (a) the Parent Borrower shall be in compliance, on a pro forma basis after giving effect to such acquisition, with the covenants contained in Section 6.1, in each case recomputed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available as if such acquisition had occurred on the first day of each relevant period for testing such compliance (as demonstrated, in the case of any acquisition for which the aggregate Consideration is greater than or equal to \$50,000,000, in a certificate of a Financial Officer delivered to the Administrative Agent (i) in the case of any acquisition for which the aggregate Consideration is greater than or equal to \$100,000,000, prior to the consummation of such acquisition and (ii) in the case of any acquisition for which the aggregate Consideration is less than \$100,000,000, concurrently with the first delivery of financial statements pursuant to Section 5.1(a) or (b) following the consummation of such acquisition), (b) no Default or Event of Default shall have occurred and be continuing, or would occur after giving effect to such acquisition, (c) the Capital Stock and substantially

all of the other property so acquired (including substantially all of the property of any Person whose Capital Stock is directly or indirectly acquired) are useful in the business of industrial products and other goods and services, (d) the Capital Stock and substantially all of the other property so acquired (including substantially all of the property of any Person whose Capital Stock is directly or indirectly acquired when such Person becomes a direct or indirect Wholly Owned Subsidiary of the Parent Borrower in accordance with clause (e), below, but excluding real property, Capital Stock and other assets to the extent such real property, Capital Stock, or other assets, as applicable, are not required by Section 5.11 to become Collateral) shall constitute and become Collateral, (e) any Person whose Capital Stock is directly or indirectly acquired shall be, after giving effect to such acquisition, a majority owned Subsidiary and within ninety (90) days of such acquisition shall be a direct or indirect Wholly Owned Subsidiary of the Parent Borrower and (f) any such acquisition shall have been approved by the Board of Directors or comparable governing body of the relevant Person (unless such relevant Person is a majority owned Subsidiary prior to such acquisition).

“Permitted Encumbrances”: (a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.5; (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 90 days or are being contested in compliance with Section 5.5; (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations; (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety, indemnity, release and appeal bonds, performance or warranty bonds and other obligations of a like nature, and guarantees thereof, in each case in the ordinary course of business; (e) deposits securing liabilities to insurance carriers under insurance or self-insurance arrangements; (f) judgment Liens not giving rise to an Event of Default so long as such Liens are adequately bonded; (g) banker’s Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a 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 Parent Borrower or any Subsidiary in excess of those set forth by regulations promulgated by the Board and (ii) such deposit account is not intended by the Parent Borrower or any Subsidiary to provide collateral to the depository institution; (h) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases or consignments entered into by the Parent Borrower and any Subsidiary in the ordinary course of business; (i) customary restrictions imposed on the transfer of copyrighted or patented materials or other intellectual property and customary provisions in agreements that restrict the assignment of such agreements or any rights thereunder; and (j) easements, leases, subleases, ground leases, zoning restrictions, building codes, rights-of-way, minor defects or irregularities in title and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Parent Borrower or any Subsidiary. Notwithstanding the foregoing, the term “Permitted Encumbrances” shall not include any Lien securing Indebtedness.

“Permitted Investments”: (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency or instrumentality thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof; (b) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, credit ratings from S&P or from Moody’s of at least “A-2” or “P-2”, respectively; (c) investments in certificates of deposit, banker’s acceptances, overnight bank deposits, eurodollar time deposits and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any

State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000 or, in the case of Foreign Subsidiaries, any local office of any commercial bank organized under the laws of the relevant local jurisdiction or any OECD country or any political subdivision thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000 and cash pooling arrangements among Foreign Subsidiaries (sometimes intermediated by a commercial bank); (d) marketable general obligations issued by any State of the United States of America or any political subdivision of any such State or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of "A" or better from either S&P or Moody's; (e) repurchase agreements with a term of not more than 30 days for securities described in clause (a), (c) or (d) above and entered into with a financial institution satisfying the criteria described in clause (c) above; (f) interests in any investment company or money market fund which invests substantially all of its assets in instruments of the type specified in clauses (a) through (e) above; and (g) in the case of Foreign Subsidiaries (other than any Foreign Subsidiary Holdco), substantially similar Investments to those set forth in clauses (a) through (f) above denominated in foreign currencies, provided that references to the United States of America (or any agency, instrumentality or State thereof) shall be deemed to mean foreign countries having a sovereign rating of "A" or better from either S&P or Moody's.

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

"Plan": any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Parent Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prepayment Event":

(a) any Disposition of property or series of related Dispositions of property (excluding any such Disposition permitted by paragraph (a), (b) or (c) of Section 6.6) that yields aggregate gross proceeds to the Parent Borrower or any of the Subsidiary Guarantors (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of \$10,000,000; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property of the Parent Borrower or any Subsidiary Guarantor that yields Net Proceeds in excess of \$10,000,000; or

(c) the Incurrence by the Parent Borrower or any Subsidiary Guarantor of any Subordinated Debt, unless the Consolidated Senior Leverage Ratio, on a pro forma basis after giving effect to such Incurrence and the application of proceeds thereof, is less than 3.00 to 1.00, computed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available for the period of four consecutive fiscal quarters ending on such day as if such Incurrence had occurred on the first day of such period.

"Prime Rate": the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Qualified Foreign Global Currency”: any Qualified Global Currency other than Dollars borrowed in New York City.

“Qualified Global Currency”: (a) sterling, Euros, Dollars (borrowed in New York City), Australian dollars, Swiss francs and Canadian dollars (borrowed in London), (b) any other eurocurrency designated by the Parent Borrower with the consent of the Administrative Agent and each Global Revolving Lender and (c) with respect to Loans made by Canadian Lenders, Canadian dollars (borrowed in Canada).

“Qualified Global Currency Borrowing”: any Borrowing comprised of Qualified Global Currency Loans.

“Qualified Global Currency Loan”: any Loan denominated in a Qualified Global Currency.

“Qualified Receivables Transaction”: any transaction or series of transactions that may be entered into by the Parent Borrower or any Subsidiary pursuant to which the Parent Borrower or any Subsidiary may sell, convey or otherwise transfer to (a) a Receivables Entity (in the case of a transfer by the Parent Borrower or any Subsidiary) or (b) any other Person (in the case of a transfer by a Receivables Entity), or may grant a security interest in, any Receivables (whether now existing or arising in the future) of the Parent Borrower or any Subsidiary, and any assets related thereto including, without limitation, all collateral securing such Receivables, all contracts and all guarantees or other obligations in respect of such Receivables, the proceeds of such Receivables and other assets which are customarily transferred, or in respect of which security interests are customarily granted, in connection with asset securitizations involving Receivables.

“Receivable”: a right to receive payment arising from a sale or lease of goods or the performance of services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit and shall include, in any event, any items of property that would be classified as an “account”, “chattel paper”, a “payment intangible” or an “instrument” under the Uniform Commercial Code as in effect in the State of New York and any “supporting obligations” (as so defined) of such items.

“Receivables Entity”: either (a) any Subsidiary or (b) another Person to which the Parent Borrower or any Subsidiary transfers Receivables and related assets, in either case which engages in no activities other than in connection with the financing of Receivables and which is designated by the Board of Directors of the Parent Borrower as a Receivables Entity:

(i) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which:

(A) is guaranteed by the Parent Borrower or any Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings);

(B) is recourse to or obligates the Parent Borrower or any Subsidiary in any way other than pursuant to Standard Securitization Undertakings;

or

(C) subjects any property or asset of the Parent Borrower or any Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(ii) with which neither the Parent Borrower nor any Subsidiary has any material contract, agreement, arrangement or understanding (except in connection with a purchase money note or Qualified Receivables Transaction permitted by Section 6.6(c)) other than (A) on terms, taken as a whole, no less favorable to the Parent Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Parent Borrower or (B) for the payment of fees in the ordinary course of business in connection with servicing Receivables; and

(iii) to which neither the Parent Borrower nor any Subsidiary has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

**"Receivables Transaction Attributed Indebtedness"**: the amount of obligations outstanding under the legal documents entered into as part of any Receivables securitization (including any Qualified Receivables Transaction and any European Receivables Securitization) on any date of determination that would be characterized as principal if such Receivables securitization were structured as a secured lending transaction rather than as a purchase.

**"Register"** has the meaning set forth in Section 9.4(c).

**"Reimbursement Obligation"**: the obligation of each relevant Borrower to reimburse the applicable Issuing Lender pursuant to Section 2.5 for amounts drawn under Letters of Credit.

**"Related Parties"**: with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees and advisors of such Person and such Person's Affiliates.

**"Release Date"**: as defined in Section 9.14.

**"Released Collateral"**: as defined in Section 9.14.

**"Required Lenders"**: at any time, Lenders having Revolving Exposures, Term Loans and unused Commitments representing at least 51% of the sum of the total Revolving Exposures, outstanding Term Loans and unused Commitments at such time.

**"Requirement of Law"**: as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Reset Date"**: as defined in Section 1.5(a).

**"Restricted Payment"**: (a) any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of the Parent Borrower 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 Capital Stock of the Parent Borrower or any Subsidiary or any option, warrant or other right to acquire any such

Capital Stock of the Parent Borrower or any Subsidiary and (b) any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on the LYONs, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, conversion or termination of the LYONs.

“Revolving Commitments”: the aggregate of the Domestic Revolving Commitments and the Global Revolving Commitments.

“Revolving Exposure”: with respect to any Lender at any time, the sum of such Lender’s Domestic Revolving Exposure and Global Revolving Exposure.

“Revolving Facility”: as defined in the definition of Facility.

“Revolving Lenders”: Domestic Revolving Lenders and Global Revolving Lenders.

“Revolving Loans”: Domestic Revolving Loans and Global Revolving Loans.

“Risk Management Subsidiary”: any Subsidiary (a) that is formed for the purpose of better controlling the costs associated with certain post-retirement benefit obligations, workers’ compensation claims, severance, deferred compensation, key man life insurance reserves, environmental liabilities and other liabilities, (b) that is a Subsidiary Guarantor and a “Grantor” for the purposes of the Guarantee and Collateral Agreement and (c) all of the Capital Stock of which, to the extent owned by the Parent Borrower or any Domestic Subsidiary, is pledged as Collateral under the Guarantee and Collateral Agreement.

“S&P”: Standard & Poor’s.

“Sale/Leaseback Transaction”: as defined in Section 6.7.

“Security Documents”: the Guarantee and Collateral Agreement, the Mortgages and any other security documents granting a Lien on any property of any Person to secure the obligations of any Loan Party under any Loan Document.

“Senior Note Indenture”: the Indenture entered into by the Parent Borrower in connection with the issuance of the Senior Notes, together with all instruments and other agreements entered into by the Parent Borrower in connection therewith.

“Senior Notes”: the collective reference to (a) the 7.5% senior notes due 2013 of the Parent Borrower having an aggregate principal amount of \$500,000,000 issued on or about December 27, 2002 and (b) the 6.25% senior notes due 2011 of the Parent Borrower having an aggregate principal amount of \$300,000,000 issued on or about June 15, 2003.

“Specified Indebtedness”: (a) any Indebtedness Incurred as permitted by Section 6.2(g), (h) or (k), and (b) any secured Indebtedness Incurred as permitted by Section 6.2(j) or (p).

“Standard Securitization Undertakings”: representations, warranties, covenants and indemnities entered into by the Parent Borrower or any Subsidiary which are reasonably customary in securitization of Receivables transactions.

**“Statutory Reserve Rate”**: a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board or by any other Governmental Authority, domestic or foreign, with jurisdiction over the Administrative Agent or any Lender (including any branch, Affiliate or other funding office thereof making or holding a Loan) (a) with respect to the Base CD Rate, for new negotiable nonpersonal time deposits in Dollars of over \$100,000 with maturities approximately equal to three months and (b) with respect to the Adjusted LIBO Rate applicable to any Borrowing, for any category of liabilities which includes deposits by reference to which the Adjusted LIBO Rate in respect of such Borrowing is determined. Such reserve percentages shall include those imposed pursuant to Regulation D of the Board. Eurocurrency Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

**“Subordinated Debt”**: any Indebtedness Incurred by the Parent Borrower as permitted by Section 6.2(b).

**“Subordinated Debt Documents”**: all indentures, instruments, agreements and other documents evidencing or governing the Subordinated Debt or providing for any Guarantee or other right in respect thereof.

**“Subsidiary”**: with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Parent Borrower.

**“Subsidiary Guarantor”**: any Subsidiary that has guaranteed the Obligations pursuant to the Guarantee and Collateral Agreement.

**“Swingline Exposure”**: at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

**“Swingline Lender”**: JPMorgan Chase Bank, in its capacity as lender of Swingline Loans hereunder.

**“Swingline Loan”**: a Loan made pursuant to Section 2.4.

**“Syndication Agent”**: The Bank of Nova Scotia, in its capacity as syndication agent.

**“Taxes”**: any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Term Loans”: Tranche A Term Loans and Tranche B Term Loans.

“Three-Month Secondary CD Rate”: for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day is not a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day) or, if such rate is not so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day is not a Business Day, on the next preceding Business Day) by the Administrative Agent from three negotiable certificate of deposit dealers of recognized standing selected by it.

“Total Consolidated Assets”: as at any date of determination, the total assets of the Parent Borrower and its consolidated Subsidiaries, determined in accordance with GAAP, as of the last day of the fiscal quarter ended immediately prior to the date of such determination.

“Total Domestic Exposure”: at any time, the sum of the total Domestic Revolving Exposures.

“Total Global Exposure”: at any time, the sum of the total Global Revolving Exposures.

“Tranche A Lender”: a Lender with an outstanding Tranche A Term Loan.

“Tranche A Maturity Date”: March 31, 2008.

“Tranche A Term Facility”: as defined in the definition of Facility.

“Tranche A Term Loan”: a Tranche A Term Loan made or converted pursuant to the Existing Credit Agreement. The aggregate principal amount of Tranche A Term Loans outstanding on the Amendment/Restatement Effective Date is \$219,375,000.

“Tranche B Incremental Commitment”: with respect to each Lender, the commitment, if any, of such Lender to make a Tranche B Incremental Term Loan to the Parent Borrower hereunder (or to convert all or part of such Lender’s Old Tranche C Term Loan into a Tranche B Incremental Term Loan hereunder) on the Amendment/Restatement Effective Date in a principal amount not to exceed the amount set forth under the heading “Tranche B Incremental Commitment” opposite such Lender’s name on Schedule 1.1A hereto or in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Lenders’ Tranche B Incremental Commitments is \$681,875,000.

“Tranche B Incremental Term Loan”: a Loan made or converted pursuant to Section 2.1(a).

“Tranche B Lender”: a Lender with an outstanding Tranche B Term Loan.

“Tranche B Maturity Date”: September 30, 2009.

“Tranche B Term Facility”: as defined in the definition of Facility.



“Tranche B Term Loans”: the collective reference to the Tranche B Term Loans made or converted pursuant to the Existing Credit Agreement and the Tranche B Incremental Term Loans. The aggregate principal amount of Tranche B Term Loans outstanding on the Amendment/Restatement Effective Date is \$1,091,000,000.

“Transactions”: the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Treaty”: the Treaty establishing the European Economic Community, being the Treaty of Rome of March 25, 1957 as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed on February 7, 1992 and came into force on November 1, 1993) and as may from time to time be further amended, supplemented or otherwise modified.

“Type”: when used in reference to any Loan or Borrowing, refers to the rate by reference to which interest on such Loan, or on the Loans comprising such Borrowing, is determined and the currency in which such Loan, or the Loans comprising such Borrowing, are denominated. For purposes hereof, “rate” shall include the Adjusted LIBO Rate, the Alternate Base Rate and any interest rate applicable to Canadian Dollar Loans, and “currency” shall include Dollars and any Qualified Global Currency permitted hereunder.

“UCC”: for any jurisdiction, the Uniform Commercial Code applicable in such jurisdiction.

“US Tranche A Term Loans”: as defined in Section 2.23.

“Utilization Percentage”: for any fiscal quarter, the percentage equivalent of a fraction (a) the numerator of which is the aggregate average daily amount of the aggregate Revolving Exposure of the Revolving Lenders (other than any Swingline Exposure) during such period and (b) the denominator of which is the sum of (i) the aggregate average daily amount of the Domestic Revolving Commitments of the Lenders during such period and (ii) the aggregate average daily amount of the Global Revolving Commitments of the Lenders during such period (it being understood that, with respect to any day after termination of the Commitments referred to in clause (i) or (ii), the Domestic Revolving Commitments, or Global Revolving Commitments, as applicable, of the Lenders shall be deemed to be the Domestic Revolving Commitments, or Global Revolving Commitments, as applicable, of the Lenders, immediately preceding such termination).

“Wholly Owned Domestic Subsidiary”: any Domestic Subsidiary that is a Wholly Owned Subsidiary of the Parent Borrower.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

“Wholly Owned Subsidiary Guarantor”: any Subsidiary Guarantor that is a Wholly Owned Subsidiary of the Parent Borrower, provided that, in any event, each Risk Management Subsidiary shall be deemed to constitute a Wholly Owned Subsidiary Guarantor for the purposes of Sections 6.2 and 6.5.

“Withdrawal Liability”: liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.2. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurocurrency Loan”) or by Class and Type (e.g., a “Eurocurrency Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurocurrency Borrowing”) or by Class and Type (e.g., a “Eurocurrency Revolving Borrowing”).

SECTION 1.3. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) where applicable, any amount (including, without limitation, minimum borrowing, prepayment or repayment amounts) expressed in Dollars shall, when referring to any currency other than Dollars, be deemed to mean an amount of such currency having a Dollar Equivalent approximately equal to such amount.

SECTION 1.4. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if at any time after the date hereof there shall occur any change in respect of GAAP from that used in the preparation of audited financial statements referred to in Section 5.1 in a manner that would have a material effect on any matter under Article VI, the Parent Borrower and the Administrative Agent will, within five Business Days of notice from the Administrative Agent or the Parent Borrower, as the case may be, to that effect, commence, and continue in good faith, negotiations with a view towards making appropriate amendments to the provisions hereof acceptable to the Required Lenders, to reflect as nearly as possible the effect of Article VI as in effect on the date hereof; provided further that, until such notice shall have been withdrawn or the relevant provisions amended in accordance herewith, Article VI shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective.

SECTION 1.5. Exchange Rates. (a) Not later than 1:00 p.m., New York City time, on each Calculation Date, the Administrative Agent shall (i) determine the Exchange Rate as of such Calculation Date to be used for calculating the Dollar Equivalent amounts of each currency in which a Global Revolving Loan, Alternative Currency Letter of Credit or unreimbursed LC Disbursement is denominated and (ii) give notice thereof to the Parent Borrower. The Exchange Rates so determined shall become effective on the first Business Day immediately following the relevant Calculation Date (a “Reset Date”), shall remain effective until the next succeeding Reset Date and shall for all purposes of this Agreement (other than for the purpose of converting into Dollars, under Sections 2.5(d), (e), (h), (j) and (k) and 2.13(b), the obligations of the Borrowers and the Domestic Revolving Lenders in respect of LC Disbursements that have not been reimbursed when due) be the Exchange Rates employed in converting any amounts between the applicable currencies.

(b) Not later than 5:00 p.m., New York City time, on each Reset Date, the Administrative Agent shall (i) determine the Global Revolving Exposure or the Alternative Currency LC Exposure, as the case may be, on such date (after giving effect to any Global Revolving Loans to be made or any Alternative Currency Letters of Credit to be issued, renewed, extended or terminated in connection with such determination) and (ii) notify the Parent Borrower and, if applicable, each Issuing Lender of the results of such determination.

SECTION 1.6. Currency Conversion. (a) If more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then (i) any reference in the Loan Documents to, and any obligations arising under the Loan Documents in, the currency of that country shall be translated into or paid in the currency or currency unit of that country designated by the Administrative Agent and (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognized by the central bank for conversion of that currency or currency unit into the other, rounded up or down by the Administrative Agent as it deems appropriate.

(b) If a change in any currency of a country occurs, this Agreement shall be amended (and each party hereto agrees to enter into any supplemental agreement necessary to effect any such amendment) to the extent that the Administrative Agent specifies to be necessary to reflect the change in currency and to put the Lenders in the same position, so far as possible, that they would have been in if no change in currency had occurred.

SECTION 1.7. Canadian Borrowing Provisions. Certain borrowing and administrative provisions applicable to Canadian Dollar Loans are set forth in Schedule 1.7 and, in the event of any inconsistency between Schedule 1.7 and the other provisions of this Agreement as they relate to Canadian Dollar Loans, Schedule 1.7 shall govern.

## ARTICLE II

### THE CREDITS

SECTION 2.1. Commitments. (a) Subject to the terms and conditions set forth herein, each relevant Lender agrees (i) to severally make a Tranche B Incremental Term Loan (or, pursuant to paragraph (b) below, to convert all or a part of such Lender's Old Tranche C Term Loan into a Tranche B Incremental Term Loan hereunder) in Dollars to the Parent Borrower on the Amendment/Restatement Effective Date in a principal amount equal to its Tranche B Incremental Commitment, (ii) to severally make Domestic Revolving Loans in Dollars to the Parent Borrower from time to time during the Domestic Revolving Availability Period in an aggregate principal amount that will not result in such Lender's Domestic Revolving Exposure exceeding such Lender's Domestic Revolving Commitment and (iii) to severally make Global Revolving Loans in Dollars or one or more Qualified Global Currencies (as specified in the Borrowing Requests with respect thereto) to any Borrower from time to time during the Global Revolving Availability Period in an aggregate principal amount that will not result in (A) such Lender's Global Revolving Exposure exceeding such Lender's Global Revolving Commitment or (B) the aggregate outstanding principal amount of such Lender's Canadian Dollar Loans at such time exceeding such Lender's Canadian Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Parent Borrower may borrow, prepay and reborrow Domestic Revolving Loans and any Borrower may borrow, prepay and reborrow Global Revolving Loans. Amounts repaid in respect of Term Loans may not be reborrowed. All Tranche A Term Loans, Tranche B Term Loans,

Domestic Revolving Loans, Global Revolving Loans and Letters of Credit outstanding under the Existing Credit Agreement on the Amendment/Restatement Effective Date shall remain outstanding to the Parent Borrower in the currency in which they were made or issued, as applicable, hereunder on the terms set forth herein.

(b) Notwithstanding the foregoing, in connection with the making of any Tranche B Incremental Term Loan pursuant to paragraph (a)(i) above, by delivering notice to the Administrative Agent, any Lender of Old Tranche C Term Loans may elect to convert all or part of the outstanding principal amount of such Lender's Old Tranche C Term Loans into a principal amount of Tranche B Incremental Term Loans hereunder equal to the principal amount so converted. On the Amendment/Restatement Effective Date, such Old Tranche C Term Loans shall be converted for all purposes of this Agreement into Tranche B Incremental Term Loans hereunder, and the Administrative Agent shall record in the Register the aggregate amount of Old Tranche C Term Loans converted into Tranche B Incremental Term Loans. Any notice to the Administrative Agent delivered by an applicable Lender pursuant to this Section shall specify (i) the amount of such Lender's Tranche B Incremental Commitment and (ii) the principal amount of Old Tranche C Term Loans held by such Lender that are to be converted into Tranche B Incremental Term Loans.

SECTION 2.2. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class; provided that (i) each Global Revolving Loan (other than Canadian Dollar Loans) shall be made by the Global Revolving Lenders ratably in accordance with their respective Available Global Revolving Commitments and (ii) each Canadian Dollar Loan shall be made by the Canadian Lenders ratably in accordance with their respective Canadian Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Subject to Section 2.15, (i) each Revolving Borrowing denominated in Dollars and each Term Borrowing shall be comprised entirely of ABR Loans or Eurocurrency Loans as the relevant Borrower may request in accordance herewith and (ii) each Qualified Global Currency Borrowing shall be comprised entirely of Eurocurrency Loans. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the relevant Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurocurrency Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000; provided that (i) an ABR Domestic Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Domestic Revolving Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.5(e) and (ii) an ABR Global Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Global Revolving Commitments. Each Swingline Loan shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000. No more than 20 Eurocurrency Borrowings may be outstanding at any one time under the Facilities other than the Global Revolving Facility. Unless otherwise agreed by the Administrative Agent, no more than 10 Eurocurrency Borrowings may be outstanding at any one time under the Global Revolving Facility.

(d) Notwithstanding any other provision of this Agreement, a Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Domestic Revolving Maturity Date, Global Revolving Maturity Date, Tranche A Maturity Date or Tranche B Maturity Date, as applicable.

SECTION 2.3. Requests for Borrowings. To request a Revolving Borrowing or a Tranche B Incremental Term Borrowing, the relevant Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurocurrency Borrowing, not later than 11:00 a.m., New York City time (or if the request is delivered in London, 11:00 a.m., London time), three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Domestic Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.5(e) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing; provided further that the Tranche B Incremental Term Loans made on the Amendment/Restatement Effective Date shall initially be ABR Loans but may, at the option of the Parent Borrower, be converted on the date that is three Business Days after the Amendment/Restatement Effective Date from ABR Loans to Eurocurrency Loans having an initial Interest Period ending on September 30, 2003. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and (x) signed by the Parent Borrower and, in the case of Borrowings by a Foreign Subsidiary Borrower, such Foreign Subsidiary Borrower or (y) in the case of Borrowings by a Foreign Subsidiary Borrower, signed by the Parent Borrower or such Foreign Subsidiary Borrower, as specified by the Parent Borrower by prior written notice to the Administrative Agent. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.2: (i) the Borrower requesting such Borrowing (and be signed on behalf of such Borrower); (ii) the Class and Type of the requested Borrowing; (iii) the aggregate amount of such Borrowing; (iv) the date of such Borrowing, which shall be a Business Day; (v) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto; (vi) the location and number of the relevant Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.6; and (vii) the currency of such Borrowing (which shall be in Dollars in the case of Tranche A Term Loans, Domestic Revolving Loans and Swingline Loans, and otherwise shall be in Dollars or a Qualified Global Currency). If no election as to the currency of a Global Revolving Borrowing is specified in any such notice, then the requested Borrowing shall be denominated in Dollars. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing if denominated in Dollars or a Eurocurrency Borrowing if denominated in a Qualified Global Currency. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the relevant Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each relevant Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.4. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Parent Borrower from time to time during the Domestic Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$40,000,000 or (ii) the sum of the total Domestic Revolving Exposures exceeding the total Domestic Revolving Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Parent Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Parent Borrower shall notify the Administrative Agent of such request by telephone (confirmed by teletype promptly thereafter), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Parent Borrower. The Swingline Lender shall make each Swingline Loan available to the Parent Borrower by means of a credit to the general deposit account of the Parent Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.5(e), by remittance to the applicable Issuing Lender) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon, New York City time, on any Business Day require the Domestic Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Domestic Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Domestic Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loans. Each Domestic Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loans. Each Domestic Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Domestic Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.6 with respect to Loans made by such Lender (and Section 2.6 shall apply, mutatis mutandis, to the payment obligations of the Domestic Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Domestic Revolving Lenders. The Administrative Agent shall notify the Parent Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Parent Borrower (or other party on behalf of the Parent Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Domestic Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Parent Borrower of its obligation to repay such Swingline Loan.

SECTION 2.5. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, any Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Lender, at any time and from time to time during the Domestic Revolving Availability Period. Notwithstanding the foregoing, the account party for each Letter of Credit shall be the Parent Borrower or the relevant Foreign Subsidiary Borrower, as specified by the Administrative Agent and the applicable Issuing Lender in consultation with the Parent Borrower. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Borrower to, or entered into by a Borrower with, the applicable Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. The letters of credit identified on Schedule 2.5 (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" for all purposes of this Agreement and the other Loan Documents.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the relevant Borrower shall deliver to the applicable Issuing Lender and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice specifying the name of the relevant Borrower and requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the currency in which such Letter of Credit is to be denominated (which shall be Dollars or, subject to Section 2.21, an Alternative Currency), the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Lender, the relevant Borrower also shall submit a letter of credit application on such Issuing Lender's standard form in connection with any request for a Letter of Credit. Following receipt of such notice and prior to the issuance of the requested Letter of Credit, the Administrative Agent shall calculate the Dollar Equivalent of such Letter of Credit and shall notify the Parent Borrower, the relevant Borrower and the applicable Issuing Lender of the amount of the Total Domestic Exposure after giving effect to (i) the issuance of such Letter of Credit, (ii) the issuance or expiration of any other Letter of Credit that is to be issued or will expire prior to the requested date of issuance of such Letter of Credit and (iii) the borrowing or repayment of any Domestic Revolving Loans or Swingline Loans that (based upon notices delivered to the Administrative Agent by the Parent Borrower) are to be borrowed or repaid prior to the requested date of issuance of such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Parent Borrower and the relevant Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$250,000,000, (ii) the LC Exposure with respect to Letters of Credit denominated in Dollars, pounds sterling and Euros shall not exceed \$250,000,000, (iii) the Alternative Currency LC Exposure with respect to Letters of Credit denominated in any Alternative Currency (other than pounds sterling or Euros) shall not exceed \$75,000,000 and (iv) the Total Domestic Exposure shall not exceed the total Domestic Revolving Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Domestic Revolving Maturity Date, provided that notwithstanding the foregoing, Letters of Credit having an aggregate face amount not in excess of \$75,000,000 may provide for an expiration date that is more than one year after the date of issuance, so long as such expiration date does not extend beyond the date referred to in clause (ii) above.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Lender or the Lenders, the applicable Issuing Lender hereby grants to each Domestic Revolving Lender, and each Domestic Revolving Lender hereby acquires from such Issuing Lender, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Domestic Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent in Dollars, for the account of such Issuing Lender, such Lender's Applicable Percentage of (i) each LC Disbursement made by such Issuing Lender in Dollars and (ii) the Dollar Equivalent, using the Exchange Rates on the date such payment is required, of each LC Disbursement made by such Issuing

Lender in an Alternative Currency and, in each case, not reimbursed by the relevant Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to such Borrower for any reason (or, if such reimbursement payment was refunded in an Alternative Currency, the Dollar Equivalent thereof using the Exchange Rates on the date of such refund). Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the applicable Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit, the relevant Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement in Dollars, or (subject to the two immediately succeeding sentences) the applicable Alternative Currency, not later than 12:00 noon, New York City time or the relevant local time, as applicable, on the date that such LC Disbursement is made, if such Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time or the relevant local time, as applicable, on such date, or, if such notice has not been received by such Borrower prior to such time on such date, then not later than 12:00 noon, New York City time or the relevant local time, as applicable, on the Business Day immediately following the day that such Borrower receives such notice; provided that, in the case of any LC Disbursement made in Dollars, the relevant Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 or 2.4 that such payment be financed in Dollars with an ABR Domestic Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, such Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Domestic Revolving Borrowing or Swingline Loan. If the relevant Borrower's reimbursement of, or obligation to reimburse, any amounts in any Alternative Currency would subject the Administrative Agent, the applicable Issuing Lender or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, such Borrower shall, at its option, either (x) pay the amount of any such tax requested by the Administrative Agent, the relevant Issuing Lender or Lender or (y) reimburse each LC Disbursement made in such Alternative Currency in Dollars, in an amount equal to the Dollar Equivalent, calculated using the applicable Exchange Rate on the date such LC Disbursement is made, of such LC Disbursement. If the relevant Borrower fails to make such payment when due, then (i) if such payment relates to an Alternative Currency Letter of Credit, automatically and with no further action required, such Borrower's obligation to reimburse the applicable LC Disbursement shall be permanently converted into an obligation to reimburse the Dollar Equivalent, calculated using the Exchange Rates on the date when such payment was due, of such LC Disbursement and (ii) the Administrative Agent shall promptly notify the applicable Issuing Lender and each other Domestic Revolving Lender of the applicable LC Disbursement, the Dollar Equivalent thereof (if such LC Disbursement relates to an Alternative Currency Letter of Credit), the payment then due from such Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Domestic Revolving Lender shall pay to the Administrative Agent in Dollars its Applicable Percentage of the payment then due from the relevant Borrower (determined as provided in clause (i) above, if such payment relates to an Alternative Currency Letter of Credit), in the same manner as provided in Section 2.6 with respect to Loans made by such Lender (and Section 2.6 shall apply, mutatis mutandis, to the payment obligations of the Domestic Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Lender in Dollars the amounts so received by it from the Domestic Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from any Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Lender or, to the extent that Domestic Revolving Lenders have made payments pursuant to this paragraph to reimburse



such Issuing Lender, then to such Lenders and such Issuing Lender as their interests may appear. Any payment made by a Domestic Revolving Lender pursuant to this paragraph to reimburse any Issuing Lender for any LC Disbursement (other than the funding of ABR Domestic Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve any Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. A Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any application for the issuance of a Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, such Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Lender; provided that neither of the foregoing sentences shall be construed to excuse such Issuing Lender from liability to a Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by applicable law) suffered by such Borrower that are caused by such Issuing Lender's gross negligence, willful misconduct or failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Lender (as finally determined by a court of competent jurisdiction), such Issuing Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The applicable Issuing Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Lender shall promptly notify the Administrative Agent and the relevant Borrower by telephone (confirmed by telecopy promptly thereafter) of such demand for payment and whether such Issuing Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the relevant Borrower of its obligation to reimburse such Issuing Lender and the Domestic Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Lender shall make any LC Disbursement, then, unless the relevant Borrower shall reimburse such LC Disbursement in full on the date such LC

Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that such Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Domestic Revolving Loans; provided that, if such Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.14(c) shall apply; provided further that, in the case of an LC Disbursement made under an Alternative Currency Letter of Credit, the amount of interest due with respect thereto shall (i) in the case of any LC Disbursement that is reimbursed on or before the Business Day immediately succeeding such LC Disbursement, (A) be payable in the applicable Alternative Currency and (B) if not reimbursed on the date of such LC Disbursement, bear interest at a rate equal to the rate reasonably determined by the applicable Issuing Lender to be the cost to such Issuing Lender of funding such LC Disbursement plus the Applicable Margin applicable to Eurocurrency Revolving Loans at such time and (ii) in the case of any LC Disbursement that is reimbursed after the Business Day immediately succeeding such LC Disbursement (A) be payable in Dollars, (B) accrue on the Dollar Equivalent, calculated using the Exchange Rates on the date such LC Disbursement was made, of such LC Disbursement and (C) bear interest at the rate per annum then applicable to ABR Revolving Loans, subject to Section 2.14(c). Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Lender, except that interest accrued on and after the date of payment by any Domestic Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Lender shall be for the account of such Lender to the extent of such payment.

(i) Replacement of any Issuing Lender. Any Issuing Lender may be replaced at any time by written agreement among the Parent Borrower, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of such Issuing Lender. At the time any such replacement shall become effective, the Parent Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 2.13(b). From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of such Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that a Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Domestic Revolving Lenders with LC Exposure representing at least 51% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, such Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Domestic Revolving Lenders, an amount in Dollars and in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that (i) the portions of such amount attributable to undrawn Alternative Currency Letters of Credit or LC Disbursements in an Alternative Currency that the Borrowers are not late in reimbursing shall be deposited in the applicable Alternative Currencies in the actual amounts of such undrawn Letters of Credit and LC Disbursements and (ii) the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in paragraph (h) or (i) of Article VII. For the purposes of this paragraph, the Alternative Currency LC Exposure shall be calculated using the Exchange Rates on the date notice demanding cash collateralization is delivered to a Borrower. Each Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(d). Each such deposit pursuant to this

paragraph or pursuant to Section 2.11(d) shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of each Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the relevant Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Lender for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the relevant Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Domestic Revolving Lenders with LC Exposure representing at least 51% of the total LC Exposure), be applied to satisfy other obligations of such Borrower under this Agreement. If a Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to such Borrower within three Business Days after all Events of Default have been cured or waived. If a Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.11(d), such amount (to the extent not applied as aforesaid) shall be returned to such Borrower as and to the extent that, after giving effect to such return, such Borrower would remain in compliance with Section 2.11(d), and no Event of Default shall have occurred and be continuing.

(k) Conversion. In the event that the Loans become immediately due and payable on any date pursuant to Article VII, all amounts (i) that a Borrower is at the time or thereafter becomes required to reimburse or otherwise pay to the Administrative Agent in respect of LC Disbursements made under any Alternative Currency Letter of Credit (other than amounts in respect of which such Borrower has deposited cash collateral pursuant to Section 2.5(j), if such cash collateral was deposited in the applicable Alternative Currency to the extent so deposited or applied), (ii) that the Domestic Revolving Lenders are at the time or thereafter become required to pay to the Administrative Agent and the Administrative Agent is at the time or thereafter becomes required to distribute to the applicable Issuing Lender pursuant to paragraph (e) of this Section in respect of unreimbursed LC Disbursements made under any Alternative Currency Letter of Credit and (iii) of each Domestic Revolving Lender's participation in any Alternative Currency Letter of Credit under which an LC Disbursement has been made shall, automatically and with no further action required, be converted into the Dollar Equivalent, calculated using the Exchange Rates on such date (or in the case of any LC Disbursement made after such date, on the date such LC Disbursement is made), of such amounts. On and after such conversion, all amounts accruing and owed to the Administrative Agent, the applicable Issuing Lender or any Lender in respect of the Obligations described in this paragraph shall accrue and be payable in Dollars at the rates otherwise applicable hereunder.

(l) Additional Issuing Lenders. The Parent Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Domestic Revolving Lender, designate one or more additional Domestic Revolving Lenders to act as an issuing lender under the terms of this Agreement, provided that the total number of Domestic Revolving Lenders so designated at any time plus the total number of Issuing Lenders pursuant to clause (c) of the definition of the term "Issuing Lenders" at such time shall not exceed five. Any Domestic Revolving Lender designated as Issuing Lender pursuant to this paragraph (1) shall be deemed to be an "Issuing Lender" for the purposes of this Agreement (in addition to being a Domestic Revolving Lender) with respect to Letters of Credit issued by such Domestic Revolving Lender.

(m) Reporting. Each Issuing Lender will report in writing to the Administrative Agent (i) on the first Business Day of each week, the aggregate face amount of Letters of Credit issued by it and outstanding as of the last Business Day of the preceding week, (ii) on or prior to each Business Day

on which such Issuing Lender expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance or amendment, and the aggregate face amount of Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and such Issuing Lender shall advise the Administrative Agent on such Business Day whether such issuance, amendment, renewal or extension occurred and whether the amount thereof changed), (iii) on each Business Day on which such Issuing Lender makes any LC Disbursement, the date of such LC Disbursement and the amount of such LC Disbursement and (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Lender on such day, the date of such failure, the relevant Borrower and amount of such LC Disbursement.

SECTION 2.6. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, in immediately available funds, not later than 12:00 noon, New York City time, in the case of fundings to an account in New York City, or 12:00 noon, local time, in the case of fundings to an account in another jurisdiction; provided that Swingline Loans shall be made as provided in Section 2.4. The Administrative Agent will make such Loans available to the relevant Borrower by promptly crediting the amounts so received, in like funds, to an account designated by such Borrower in the applicable Borrowing Request, which account must be in the name of such Borrower and, as applicable, in London or in the financial center of the country of the currency of the Loan; provided that ABR Domestic Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.5(e) shall be remitted by the Administrative Agent to the applicable Issuing Lender. Unless otherwise agreed by the Administrative Agent, the Tranche B Incremental Term Loans made or converted on the Amendment/Restatement Effective Date shall initially be ABR Loans.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount in the required currency. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and such Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon in such currency, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds in the relevant currency (which determination shall be conclusive absent manifest error) or (ii) in the case of a Borrower, the interest rate applicable to such Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.7. Interest Elections. (a) Each Revolving Borrowing and Term Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, a Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section. A Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding the foregoing, a Borrower may not (i) elect to convert the currency in which any Loans are denominated, (ii) elect to convert Qualified Global Currency Loans from

Eurocurrency Loans to ABR Loans, (iii) elect an Interest Period for Eurocurrency Loans that does not comply with Section 2.2(d), (iv) elect to convert any ABR Loans to Eurocurrency Loans that would result in the number of Eurocurrency Borrowings exceeding the maximum number of Eurocurrency Borrowings permitted under Section 2.2(c), (v) elect an Interest Period for Eurocurrency Loans unless the aggregate outstanding principal amount of Eurocurrency Loans (including any Eurocurrency Loans made to such Borrower in the same currency on the date that such Interest Period is to begin) to which such Interest Period will apply complies with the requirements as to minimum principal amount set forth in Section 2.2(c) or (vi) elect to convert or continue any Swingline Borrowings.

(b) To make an election pursuant to this Section, a Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if such Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by delivery to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the relevant Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2 and paragraph (a) of this Section: (i) the Borrowing to which such Interest Election Request applies; (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day; (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and (iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election. If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the relevant Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each relevant Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the relevant Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing denominated in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. If the relevant Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing denominated in a Qualified Global Currency prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall automatically continue as a Eurocurrency Loan having an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Parent Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing denominated in Dollars may be converted to or continued as a Eurocurrency Borrowing, (ii) unless repaid, each Eurocurrency Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (iii) no Borrowing denominated in a Qualified Global Currency having an Interest Period in excess of one month may be made or continued.

**SECTION 2.8. Termination and Reduction of Commitments.** (a) Unless previously terminated, (i) the Tranche B Incremental Commitments shall terminate at 5:00 p.m., New York City time, on the Amendment/Restatement Effective Date, (ii) the Domestic Revolving Commitments shall terminate on the Domestic Revolving Maturity Date and (iii) the Global Revolving Commitments shall terminate on the Global Revolving Maturity Date.

(b) The Parent Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$10,000,000 and (ii) the Parent Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, (i) the Total Domestic Exposure would exceed the total Domestic Revolving Commitments or (ii) the Total Global Exposure would exceed the total Global Revolving Commitments.

(c) The Parent Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section, at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Parent Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Parent Borrower may state that such notice is conditioned upon the effectiveness or closing of other credit facilities, debt financings or Dispositions, in which case such notice may be revoked by the Parent Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.9. Evidence of Debt. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent, on behalf of the Borrowers, shall maintain the Register pursuant to Section 9.4(c) and a subaccount for each Lender in which it shall record (i) the amount of each Loan made hereunder (whether or not evidenced by a promissory note), the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal and/or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to paragraph (a) or (b) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(d) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, each applicable Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender and its registered assigns and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more promissory notes in such form payable to such payee and its registered assigns.

SECTION 2.10. Repayment of Loans. (a) The Parent Borrower shall repay Tranche A Term Borrowings on each date set forth below in the aggregate principal amount set forth opposite such date:

<u>Date</u>	<u>Amount</u>
September 30, 2003	\$ 5,625,000
December 31, 2003	\$ 5,625,000
March 31, 2004	\$ 5,625,000
June 30, 2004	\$ 5,625,000
September 30, 2004	\$ 5,625,000
December 31, 2004	\$ 5,625,000
March 31, 2005	\$ 8,437,500
June 30, 2005	\$ 8,437,500
September 30, 2005	\$ 8,437,500
December 31, 2005	\$ 8,437,500
March 31, 2006	\$ 11,250,000
June 30, 2006	\$ 11,250,000
September 30, 2006	\$ 11,250,000
December 31, 2006	\$ 11,250,000
March 31, 2007	\$ 12,656,250
June 30, 2007	\$ 12,656,250
September 30, 2007	\$ 12,656,250
December 31, 2007	\$ 12,656,250
March 31, 2008	\$ 56,250,000

(b) The Parent Borrower shall repay Tranche B Term Borrowings on each date set forth below in the aggregate principal amount set forth opposite such date:

<u>Date</u>	<u>Amount</u>
March 31, 2004	\$ 2,769,035.53
June 30, 2004	\$ 2,769,035.53
September 30, 2004	\$ 2,769,035.53
December 31, 2004	\$ 2,769,035.53
March 31, 2005	\$ 2,769,035.53
June 30, 2005	\$ 2,769,035.53
September 30, 2005	\$ 2,769,035.53
December 31, 2005	\$ 2,769,035.53
March 31, 2006	\$ 2,769,035.53
June 30, 2006	\$ 2,769,035.53
September 30, 2006	\$ 2,769,035.53
December 31, 2006	\$ 2,769,035.53
March 31, 2007	\$ 2,769,035.53
June 30, 2007	\$ 2,769,035.53
September 30, 2007	\$ 2,769,035.53
December 31, 2007	\$ 2,769,035.53
March 31, 2008	\$ 2,769,035.53
June 30, 2008	\$ 2,769,035.53
September 30, 2008	\$ 2,769,035.53
December 31, 2008	\$ 259,597,081.22
March 31, 2009	\$ 259,597,081.22
June 30, 2009	\$ 259,597,081.22
September 30, 2009	\$ 259,597,081.22

(c) The Parent Borrower shall repay (i) the then unpaid principal amount of the Domestic Revolving Loans on the Domestic Revolving Maturity Date and (ii) the then unpaid principal amount of each Swingline Loan on the earlier of the Domestic Revolving Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Domestic Revolving Borrowing is made, the Parent Borrower shall repay all Swingline Loans then outstanding.

(d) Each Borrower shall repay the then unpaid principal amount of the Global Revolving Loans on the Global Revolving Maturity Date.

SECTION 2.11. Prepayment of Loans. (a) Each Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section, provided that Canadian B/As may not be optionally prepaid.

(b) If on any date any Net Proceeds are received by or on behalf of the Parent Borrower or any Subsidiary in respect of any Prepayment Event, the Parent Borrower shall, within ten Business Days after such Net Proceeds are received, prepay Term Borrowings in an amount equal to the aggregate amount of such Net Proceeds; provided that, in the case of any event described in clause (a) or (b) of the definition of the term Prepayment Event, if the Parent Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect that the Parent Borrower and the Subsidiaries intend to apply the Net Proceeds from such event ("Reinvestment Net Proceeds"), within 360 days after receipt of such Net Proceeds, to make Permitted Acquisitions or Investments permitted by Section 6.5 or acquire real property, equipment or other assets to be used in the business of the Parent Borrower and the Subsidiaries, and certifying that no Default or Event of Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of such event except to the extent of any Net Proceeds therefrom that have not been so applied by the end of such 360-day period, at which time a prepayment shall be required in an amount equal to the Net Proceeds that have not been so applied. Notwithstanding the foregoing, from and after the date during any fiscal year of the Parent Borrower on which the aggregate gross proceeds (inclusive of amounts of the type described in the first parenthetical of Section 6.6(d)) from Dispositions pursuant to Sections 6.6(d) and (e) received during such fiscal year (or in the case of the fiscal year ending December 31, 2003, during the period commencing on the Amendment/Restatement Effective Date and ending on December 31, 2003) exceed 10% of Total Consolidated Assets, the Net Proceeds from each subsequent Prepayment Event occurring during such fiscal year or period resulting from Dispositions pursuant to Sections 6.6(d) and (e) (and a ratable amount of Net Proceeds from any Prepayment Event that first causes the aforementioned 10% threshold to be exceeded, which ratable amount shall be determined by reference to a fraction, the numerator of which shall be the portion of the gross proceeds from such Prepayment Event representing the excess above such 10% threshold and the denominator of which shall be the aggregate gross proceeds from such Prepayment Event) may not be treated as Reinvestment Net Proceeds.

(c) Notwithstanding anything to the contrary in this Agreement, with respect to the amount of any mandatory prepayment described in Section 2.11 that is allocated to Tranche B Borrowings (such amount, the "Tranche B Prepayment Amount"), at any time when Tranche A Borrowings remain outstanding, the Parent Borrower will, in lieu of applying such amount to the prepayment of Tranche B Borrowings on the date of the relevant Prepayment Event, give the Administrative Agent telephonic notice (promptly confirmed in writing) requesting that the Administrative Agent prepare and provide to each Tranche B Lender a notice (each, a "Prepayment Option Notice") as described below. As promptly as practicable after receiving such notice from the



Parent Borrower, the Administrative Agent will send to each Tranche B Lender a Prepayment Option Notice, which shall be in the form of Exhibit H, and shall include an offer by the Parent Borrower to prepay on the date that is ten Business Days after the date of the relevant Prepayment Event, the relevant Term Loans of such Lender by an amount equal to the portion of the Prepayment Amount indicated in such Lender's Prepayment Option Notice as being applicable to such Lender's Tranche B Term Loans. Each Tranche B Lender shall return a completed Prepayment Option Notice to the Administrative Agent no later than three Business Days prior to the mandatory prepayment date specified in the applicable Prepayment Option Notice (each a "Mandatory Prepayment Date"), with the failure to so return such notice being deemed to constitute an acceptance of the relevant prepayment. On the Mandatory Prepayment Date, (i) the Parent Borrower shall pay to the relevant Tranche B Lenders the aggregate amount necessary to prepay that portion of the outstanding relevant Term Loans in respect of which such Lenders have accepted, or have been deemed to have accepted, prepayment as described above and (ii) the Parent Borrower shall pay to the Tranche A Lenders an amount equal to the portion of the Tranche B Prepayment Amount not accepted by the Tranche B Lenders, and such amount shall be applied to the prepayment of the Tranche A Borrowings.

(d) If on any Determination Date relating to the Global Revolving Facility, the Total Global Exposure exceeds 105% of the total Global Revolving Commitments, the Parent Borrower shall, without notice or demand, within three Business Days after such Determination Date, prepay (or cause the relevant Foreign Subsidiary Borrower to prepay) Revolving Borrowings in an aggregate amount such that, after giving effect thereto, (i) the Total Global Exposure does not exceed the total Global Revolving Commitments and (ii) the aggregate outstanding principal amount of all Canadian Dollar Loans does not exceed the total Canadian Commitments. If on any Determination Date relating to the Domestic Revolving Facility, the Total Domestic Exposure exceeds 105% of the total Domestic Revolving Commitments, the Parent Borrower shall, without notice or demand, within three Business Days after such Determination Date, prepay Revolving Borrowings or Swingline Borrowings (or, if no such Borrowings are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.5(j)) in an aggregate amount such that, after giving effect thereto, the Total Domestic Exposure does not exceed the total Domestic Revolving Commitments.

(e) A Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy promptly thereafter) of any prepayment hereunder (i) in the case of prepayment of a Eurocurrency Borrowing, not later than 11:00 a.m., New York City time (or 11:00 a.m., London time, as applicable), three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that, if a notice of optional prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.8, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.8. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2, except as necessary to apply fully the required amount of a mandatory prepayment.

SECTION 2.12. Certain Payment Application Matters. (a) Each repayment or prepayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. It is understood that, in the case of Global Revolving Loans, the relevant Borrower may select the particular currency of Loans to be prepaid, and such prepayment shall then be applied ratably to such Loans. Repayments and prepayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

(b) Any mandatory prepayment of Term Borrowings shall, subject to Section 2.11(c), be allocated pro rata among the Tranche A Term Borrowings and Tranche B Term Borrowings based on the aggregate principal amount of outstanding Borrowings of each such Class. Any optional prepayment of Term Borrowings shall be allocated as directed by the Parent Borrower to the Tranche A Term Borrowings and/or Tranche B Term Borrowings.

(c) Each optional prepayment shall be applied to the installments thereof, first to any remaining scheduled installments due prior to the first anniversary of the date of such prepayment (applied pro rata to such remaining installments) and, second, to the remaining scheduled installments due on or after the first anniversary of the date of such prepayment (applied pro rata to such remaining installments). Each mandatory prepayment allocated to the Tranche A Term Borrowings or the Tranche B Term Borrowings shall, subject to Section 2.11(c), be applied pro rata to the remaining installments thereof.

SECTION 2.13. Fees. (a) The Parent Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily unused amount of each Revolving Commitment of such Lender during the period from and including December 27, 2002 to but excluding the date on which such Revolving Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. Commitment fees shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees in respect of the Revolving Commitments, (i) the Domestic Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Domestic Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose) and (ii) the Global Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Global Revolving Loans of such Lender.

(b) Each Borrower agrees to pay (i) to the Administrative Agent for the account of each Domestic Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate as interest on Eurocurrency Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Domestic Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Lender a fronting fee, which shall accrue at the rate of 0.20% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Domestic Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Lender's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Domestic Revolving Commitments terminate and any such fees accruing after the date on which the Domestic Revolving Commitments terminate shall be payable on demand. Any other fees payable to the applicable Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand. All participation

fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For the purposes of calculating the average daily amount of the LC Exposure for any period under this Section 2.13(b), the average daily amount of the Alternative Currency LC Exposure for such period shall be calculated by multiplying (x) the average daily balance of each Alternative Currency Letter of Credit (expressed in the currency in which such Alternative Currency Letter of Credit is denominated) by (y) the Exchange Rate for each such Alternative Currency in effect on the last Business Day of such period or by such other reasonable method that the Administrative Agent deems appropriate.

(c) Each Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between such Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Lender, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

SECTION 2.14. Interest. (a) ABR Loans shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) Eurocurrency Loans shall bear interest at the Adjusted LIBO Rate for the applicable Interest Period plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section (or, in the case of amounts denominated in a Qualified Foreign Global Currency the rate that would apply to Loans in such currency pursuant to clause (i) above), in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (as well after as before judgment).

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Domestic Revolving Availability Period or Global Revolving Availability Period, as applicable), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate, and interest in respect of sterling-denominated Loans, shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.15. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period;

(b) the Administrative Agent is advised by the Majority Facility Lenders under the relevant Facility that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period; or

(c) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that deposits in the principal amounts of the Loans comprising such Borrowing and in the currency in which such Loans are to be denominated are not generally available in the relevant market;

then the Administrative Agent shall give notice thereof to the Parent Borrower and the relevant Lenders by telephone or teletype as promptly as practicable thereafter and, until the Administrative Agent notifies the Parent Borrower and the relevant Lenders that the circumstances giving rise to such notice no longer exist, then, in the case of the relevant Facility, any request by a Borrower for a Eurocurrency Borrowing of the affected Type or in the affected currency, or a conversion to or continuation of a Eurocurrency Borrowing of the affected Type or in the affected currency, pursuant to Section 2.3 or 2.7, shall be deemed rescinded; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

SECTION 2.16. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or Issuing Lender or the London (or other relevant) interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the net cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Lender of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Lender hereunder (whether of principal, interest or otherwise), then each relevant Borrower will pay to such Lender or Issuing Lender such additional amount or amounts as will compensate such Lender or Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Lender's capital or on the capital of such Lender's or Issuing Lender's holding company, if any,

as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Lender's policies and the policies of such Lender's or Issuing Lender's holding company with respect to capital adequacy), then from time to time the relevant Borrower will pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Lender setting forth in reasonable detail the computation of the amount or amounts necessary to compensate such Lender or Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the relevant Borrower and shall be conclusive absent manifest error. Such Borrower shall pay such Lender or Issuing Lender the amount shown as due on any such certificate within 10 days after receipt thereof. All amounts payable by any Borrower pursuant to paragraph (a) or (b) of this Section shall be deemed to constitute interest expense in respect of the Loans.

(d) Failure or delay on the part of any Lender or Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Lender's right to demand such compensation; provided that no Borrower shall be required to compensate a Lender or an Issuing Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or Issuing Lender, as the case may be, notifies such Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

**SECTION 2.17. Break Funding Payments.** In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period (or, in the case of Canadian B/As, the Canadian Contract Period) applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(e) and is revoked in accordance therewith), or (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period (or, in the case of Canadian B/As, the Canadian Contract Period) applicable thereto as a result of a request by the Parent Borrower pursuant to Section 2.20, then, in any such event, the relevant Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period (or, in the case of Canadian B/As, the Canadian Contract Period) therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period or Canadian Contract Period, as applicable, for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the relevant currency of a comparable amount and period from other banks in the relevant market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the relevant Borrower and shall be conclusive absent manifest error, and shall be so delivered as promptly as reasonably practicable after such Lender obtains actual knowledge of such amount. Such Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.18. Taxes (a) Any and all payments by or on account of any obligation of the Parent Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes; provided that if a Borrower shall be required to deduct any Indemnified Taxes from such payments, then (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) the Administrative Agent or the relevant Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law and indemnify the Lender from and against any Other Taxes and any penalties, interest and reasonable expenses arising therefrom or with respect thereto.

(c) Each Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender on or with respect to any payment by or on account of any obligation of a Borrower hereunder or under any other Loan Document (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error, and shall be so delivered as promptly as reasonably practicable after such Lender or the Administrative Agent, as the case may be, obtains actual knowledge of such amount.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Each Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to the Parent Borrower and the Administrative Agent, on or before the date on which it becomes a party to this Agreement either:

- (A) two duly completed and signed original copies of either Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8ECI (relating to such Non-U.S. Lender and entitling it to a complete exemption from or reduction of withholding of United States federal income taxes on all amounts to be received by such Non-U.S. Lender pursuant to this Agreement and the other credit documents), or successor and related applicable forms, as the case may be (including, where applicable any such forms required to be provided to certify to such exemption on behalf of such Non-U.S. Lender's beneficial owners).
- (B) in the case of a Non-U.S. Lender that is not a "Bank" within the meaning of Section 881(c)(3)(A) of the Code and that does not comply with the requirements

of clause (A) hereof, (x) a statement in the form of Exhibit F (and any similar statements required to certify to the exemption of its beneficial owners) or such other form of statement as shall be reasonably requested by the Parent Borrower from time to time to the effect that such Non-U.S. Lender (and, where applicable, its beneficial owners) is eligible for a complete exemption from withholding of United States federal income taxes under Code Section 871(h) or 881(c), and (y) two duly completed and signed original copies of Internal Revenue Service Form W-8BEN or successor and related applicable forms (including, where applicable, copies of such forms with respect to such entity's beneficial owners).

Further, each Non-U.S. Lender agrees (i) to deliver to the Parent Borrower and the Administrative Agent, and if applicable, the assigning Lender two further duly completed and signed original copies of such Forms W-8BEN or W-8ECI, as the case may be (and, where applicable, any such forms on behalf of its beneficial owners) or successor and related applicable forms, on or before the date that any such form expires or becomes obsolete and promptly after the occurrence of any event requiring a change from the most recent form(s) previously delivered by it to the Parent Borrower in accordance with applicable U.S. laws and regulations, (ii) in the case of a Non-U.S. Lender that delivers a statement in the form of Exhibit F (or such other form of statement as shall have been requested by the Parent Borrower), to deliver to the Parent Borrower and the Administrative Agent, and if applicable, the assigning Lender, such statement (and where applicable, any such statements from its beneficial owners) on the two year anniversary of the date on which such Non-U.S. Lender became a party to this Agreement and to deliver promptly to the Parent Borrower and the Administrative Agent, such additional statements and forms as shall be reasonably requested by the Parent Borrower from time to time, and (iii) to notify promptly the Parent Borrower and the Administrative Agent if it (or, as applicable, its beneficial owners) is no longer able to deliver, or if it is required to withdraw or cancel, any form of statement previously delivered by it pursuant to this Section 2.18(e). Notwithstanding anything herein to the contrary, (x) no Non-U.S. Lender shall be required to provide any forms, certification or documentation which it is not legally entitled or able to deliver and (y) no Canadian Lender shall be required to provide any Internal Revenue Service forms pursuant to this Section 2.18(e).

(f) Each Lender which is not a Non-U.S. Lender shall deliver to Parent Borrower and the Administrative Agent (and if applicable the assigning or participating Lender) two copies of a statement which shall contain the address of such Lender's office or place of business in the United States, which shall be signed by an authorized officer of such Lender, together with two duly completed copies of Internal Revenue Service Form W-9 (or applicable successor form) unless it establishes to the satisfaction of the Parent Borrower that it is otherwise eligible for an exemption from backup withholding tax or other applicable withholding tax. Each such Lender shall deliver to the Parent Borrower and Administrative Agent two further duly completed and signed forms and statements (or successor form) at or before the time any such form or statement becomes obsolete.

(g) Each Non-U.S. Lender agrees to indemnify and hold harmless each Borrower from and against any Taxes imposed by or on behalf of the United States or any taxing jurisdiction thereof, penalties, additions to tax, fines, interest or other liabilities, costs or losses (including, without limitation, reasonable attorney's fees and expenses) incurred or payable by such Borrower as a result of the failure of such Borrower to comply with its obligations to deduct or withhold any Taxes imposed by or on behalf of the United States or any taxing jurisdiction thereof (including penalties, additions to tax, fines or interest on such Taxes) from any payments made pursuant to this Agreement to such Non-U.S.

Lender or the Administrative Agent which failure resulted from (i) such Borrower's reliance on Exhibit F pursuant to Section 2.18(e) or (ii) such Lender being a "conduit entity" within the meaning of Treasury Reg. Section 1.881-3 or any successor provision thereto; and, provided additionally, that, without limitation, no amounts shall be due and owing to such Lender pursuant to Section 2.18 if either provisions (i) or (ii) are applicable.

(h) If the Administrative Agent or any Lender receives a refund in respect of Indemnified Taxes or Other Taxes paid by a Borrower, which in the reasonable good faith judgment of such Lender is allocable to such payment, it shall promptly pay such refund, together with any other amounts paid by such Borrower in connection with such refunded Indemnified Taxes or Other Taxes, to such Borrower, net of all out-of-pocket expenses of such Lender incurred in obtaining such refund, provided, however, that each Borrower agrees to promptly return such refund to the Administrative Agent or the applicable Lender as the case may be, if it receives notice from the Administrative Agent or applicable Lender that such Administrative Agent or Lender is required to repay such refund.

SECTION 2.19. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) Each Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.16, 2.17 or 2.18, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 12:00 noon, local time), on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at its Administrative Office, except as otherwise expressly provided herein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Except as otherwise specified in this Agreement, each such payment (other than principal of and interest on Qualified Global Currency Loans and LC Disbursements denominated in an Alternative Currency, which shall be made in the applicable Qualified Global Currency or, except as otherwise specified in Section 2.5(e), Alternative Currency, as the case may be) shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments



shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Parent Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders (or any of them) hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the relevant Lenders the amount due. In such event, if such Borrower has not in fact made such payment, then each relevant Lender severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds in the relevant currency (which determination shall be conclusive absent manifest error).

(e) If any Lender shall fail to make any payment required to be made by it to the Administrative Agent, the Swingline Lender or any Issuing Lender, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

**SECTION 2.20. Mitigation Obligations; Replacement of Lenders.** (a) If any Lender requests compensation under Section 2.16, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.16 or 2.18, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.16, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.18, or if any Lender defaults in its obligation to fund Loans hereunder, then such Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a

Lender accepts such assignment); provided that (i) such Borrower or the Parent Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld and (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or such Borrower (in the case of all other amounts). A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling a Borrower to require such assignment and delegation cease to apply.

SECTION 2.21. Change in Law. Notwithstanding any other provision of this Agreement, if, after the date hereof, (a) any Change in Law shall make it unlawful for any Issuing Lender to issue Letters of Credit denominated in an Alternative Currency, or any Global Revolving Lender to make Global Revolving Loans denominated in a Qualified Global Currency, or any Canadian Lender to accept Canadian B/As, or (b) there shall have occurred any change in national or international financial, political or economic conditions (including the imposition of or any change in exchange controls) or currency exchange rates that would make it impracticable for any Issuing Lender to issue Letters of Credit denominated in such Alternative Currency for the account of a Borrower, or any Global Revolving Lender to make Global Revolving Loans denominated in a Qualified Global Currency, or any Canadian Lender to accept Canadian B/As, then by prompt written notice thereof to the Parent Borrower and to the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (i) such Issuing Lender may declare that Letters of Credit will not thereafter be issued by it in the affected Alternative Currency or Alternative Currencies, whereupon the affected Alternative Currency or Alternative Currencies shall be deemed (for the duration of such declaration) not to constitute an Alternative Currency for purposes of the issuance of Letters of Credit by such Issuing Lender, (ii) such Global Revolving Lender may declare that Global Revolving Loans will not thereafter be made by it in the affected Qualified Global Currency or Qualified Global Currencies, whereupon the affected Qualified Global Currency or Qualified Global Currencies shall be deemed (for the duration of such declaration) not to constitute a Qualified Global Currency for purposes of the making of Global Revolving Loans by such Global Revolving Lender and (iii) the commitment of such Canadian Lender hereunder to accept Canadian B/As and continue Canadian B/As as such shall forthwith be cancelled (for the duration of such declaration) and such Lender's Canadian B/As, if any, shall (on the respective last days of the then current Canadian Contract Periods or within such earlier period as required by law) be converted automatically to Eurocurrency Borrowings having an Interest Period of one month.

SECTION 2.22. Foreign Subsidiary Borrowers. Subject to the consent of the Administrative Agent, the Parent Borrower may designate any Foreign Subsidiary of the Parent Borrower as a Foreign Subsidiary Borrower by delivery to the Administrative Agent of a Borrowing Subsidiary Agreement executed by such Subsidiary, the Parent Borrower and the Administrative Agent and upon such delivery such Subsidiary shall for all purposes of this Agreement be a Foreign Subsidiary Borrower and a party to this Agreement until the Parent Borrower shall have executed and delivered to the Administrative Agent a Borrowing Subsidiary Termination with respect to such Subsidiary, whereupon such Subsidiary shall cease to be a Foreign Subsidiary Borrower and a party to this Agreement. Notwithstanding the preceding sentence, no Borrowing Subsidiary Termination will become effective as to any Foreign Subsidiary Borrower at a time when any principal of or interest on any Loan to such Foreign Subsidiary Borrower shall be outstanding hereunder, provided that such Borrowing Subsidiary Termination shall be effective to terminate such Foreign Subsidiary Borrower's right to make further borrowings under this Agreement.

SECTION 2.23. Canadian Tranche A Term Loans. Notwithstanding anything to the contrary in this Agreement, Tranche A Term Loans may be replaced with Loans ("Canadian Tranche A Term Loans") made in Dollars to a Foreign Subsidiary Borrower organized under the laws of Canada or any

province thereof, subject to the prior written consent of the Administrative Agent and the Lenders making the Canadian Tranche A Term Loans. Canadian Tranche A Term Loans shall replace, on the date such Loans are made, and on a dollar-for-dollar basis, existing Tranche A Term Loans of the Lenders making the Canadian Tranche A Term Loans. Canadian Tranche A Term Loans shall have substantially the same terms and conditions as the Tranche A Term Loans borrowed by the Parent Borrower ("US Tranche A Term Loans"), except as otherwise provided in this paragraph. It is understood that (a) all references to "Tranche A Term Loans" and "Term Loans" (and related terms) shall be deemed to include Canadian Tranche A Term Loans, (b) the interest rate applicable to Canadian Tranche A Term Loans shall be either the prime rate for Dollar loans quoted by the Lender referred to in clause (d) below or the Adjusted LIBO Rate, in each case plus the Applicable Rate in respect of US Tranche A Term Loans that are ABR Loans or Eurocurrency Loans, respectively, (c) all payments of the Tranche A Term Loans, whether made pursuant to Section 2.10, Section 2.11 or otherwise, shall be applied pro rata to the US Tranche A Term Loans and the Canadian Tranche A Term Loans and (d) matters concerning the Canadian Tranche A Term Loans will be administered by a Lender to be determined at the time such Loans are made. To the extent necessary to effectuate the foregoing, this Agreement and the other Loan Documents may be amended pursuant to the aforementioned written consent without requirement for the consent of any other Lender.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

The Parent Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 3.1. Organization; Powers. Each of the Parent Borrower and its Subsidiaries (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 to carry on its business as now conducted in all material respects and (c) except where the failure to do so, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.2. Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Borrower or such Loan Party (as the case may be), enforceable against such Borrower or such other Loan Party, as the case may be, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.3. Governmental Approvals; No Conflicts. The Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any applicable material law or regulation or the charter, by-laws or other organizational documents of the Parent Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Parent Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Parent Borrower or any of its Subsidiaries, except Liens created under the Loan Documents.

**SECTION 3.4. Financial Condition; No Material Adverse Change.** (a) The Parent Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2002, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal quarters and the portion of the fiscal year ended March 31, 2003 and June 30, 2003, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Except as disclosed in the financial statements referred to above or the notes thereto or in the Information Memorandum and except for the Disclosed Matters, based on the facts and circumstances in existence on the Amendment/Restatement Effective Date and taking into consideration the likelihood of any realization with respect to contingent liabilities, after giving effect to the Transactions, none of the Parent Borrower or its Subsidiaries has, as of the Amendment/Restatement Effective Date, any material contingent liabilities, unusual long-term commitments or unrealized losses.

(c) Since December 31, 2002, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

**SECTION 3.5. Properties.** (a) Each of the Parent Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, each of the Parent Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Parent Borrower and its Subsidiaries does not infringe upon the rights of any other Person.

(c) Schedule 3.5 sets forth the location of substantially all of the real property that is owned or leased by the Parent Borrower or any of its Subsidiaries as of the Amendment/Restatement Effective Date after giving effect to the Transactions, each with a book value in excess of \$5,000,000; provided that the aggregate book value of all such real properties that are not listed on Schedule 3.5 shall not exceed \$50,000,000.

(d) As of the Amendment/Restatement Effective Date, neither the Parent Borrower nor any of its Subsidiaries has received notice of, or has knowledge of, any pending or contemplated condemnation proceeding affecting any Mortgaged Property or any sale or disposition thereof in lieu of condemnation. To the Parent Borrower's knowledge, neither any Mortgaged Property nor any interest therein is subject to any right of first refusal, option or other contractual right to purchase such Mortgaged Property or interest therein.

**SECTION 3.6. Litigation and Environmental Matters.** (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Parent Borrower, threatened against or affecting the Parent Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, in the aggregate, to have a Material Adverse Effect or (ii) that involve any of the Loan Documents, the Original Credit Agreement, the Existing Credit Agreement or the Transactions.

(b) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect, neither the Parent Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.7. Compliance with Laws and Agreements. Each of the Parent Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.8. Investment and Holding Company Status. Neither the Parent Borrower nor any of its Subsidiaries is (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.9. Taxes Each of the Parent Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Parent Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to have a Material Adverse Effect. Except to the extent such excess could not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Disclosure. As of the Amendment/Restatement Effective Date, the Parent Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which the Parent Borrower or any of its Subsidiaries is subject, and all other matters known to any of them, that, in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information, taken as a whole, furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Parent Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. Subsidiaries. Schedule 3.12 sets forth the name of, and the direct and indirect ownership interest of the Parent Borrower in, each Subsidiary of the Parent Borrower and identifies each Subsidiary that is a Subsidiary Guarantor, in each case as of the Amendment/Restatement Effective Date after giving effect to the Transactions.

SECTION 3.13. Insurance. Schedule 3.13 sets forth a description of all insurance maintained by or on behalf of the Parent Borrower and its Subsidiaries as of the Amendment/Restatement Effective Date. As of the Amendment/Restatement Effective Date, all premiums due and payable in respect of such insurance have been paid.

SECTION 3.14. Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes, lockouts or slowdowns against the Parent Borrower or any Subsidiary pending or, to the knowledge of the Parent Borrower, threatened; (b) the hours worked by and payments made to employees of the Parent Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters; and (c) all payments due from the Parent Borrower or any Subsidiary, or for which any claim may be made against the Parent Borrower or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Parent Borrower or such Subsidiary. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Parent Borrower or any Subsidiary is bound.

SECTION 3.15. Solvency. Immediately after the consummation of the Transactions to occur on the Amendment/Restatement Effective Date and immediately following the making of each Loan made on the Amendment/Restatement Effective Date and after giving effect to the application of the proceeds of such Loans, (a) the fair value of the assets of the Parent Borrower and its Subsidiaries, taken as a whole, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Parent Borrower and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Parent Borrower and its Subsidiaries, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Parent Borrower and its Subsidiaries, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Amendment/Restatement Effective Date.

SECTION 3.16. Senior Indebtedness. At all times after the issuance of any Subordinated Debt, (a) the Obligations will constitute "Senior Indebtedness" (or any comparable concept) under and as defined in the Subordinated Debt Documents and (b) in the event that any Subsidiary Guarantees the Subordinated Debt, the obligations of such Subsidiary Guarantor under the Guarantee and Collateral Agreement will constitute "Guarantor Senior Indebtedness" (or any comparable concept) of such Subsidiary Guarantor under and as defined in the Subordinated Debt Documents.

SECTION 3.17. Security Documents. (a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent or the Collateral Agent, as the case may be, a legal, valid and enforceable security interest in the Collateral to the extent described therein and available under the UCC. As of the Amendment/Restatement Effective Date, Schedule 3.17(a) lists all of the filing

jurisdictions in which UCC-1 Financing Statements are required to be filed pursuant to the Guarantee and Collateral Agreement. Upon filing of such UCC-1 Financing Statements, the Guarantee and Collateral Agreement creates a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral to the extent available under the UCC, as security for the Obligations (as defined in the Guarantee and Collateral Agreement), in each case, subject to Permitted Encumbrances or as otherwise permitted by Section 6.3, prior and superior in right to any other Person.

(b) Each of the Mortgages is effective to create in favor of the Administrative Agent or the Collateral Agent, as the case may be, for the benefit of the Lenders, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof. As of the Amendment/Restatement Effective Date, Schedule 3.17(b) lists the location of each Mortgaged Property. Each Mortgage constitutes a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties referred to therein and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case, subject to Permitted Encumbrances, prior and superior in right to any other Person.

#### ARTICLE IV

#### CONDITIONS

SECTION 4.1. Amendment/Restatement Effective Date. The amendments to the Existing Credit Agreement effected hereby and the obligations of the Lenders to make or maintain Loans and of the Issuing Lenders to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) Credit Agreement. The Administrative Agent shall have received (i) from each Borrower, a counterpart of this Agreement signed on behalf of such Borrower, (ii) from the Required Lenders under (and as defined in) the Existing Credit Agreement, an Addendum in the form of Exhibit E, signed on behalf of such Lenders and (iii) from each Lender with a Tranche B Incremental Commitment, an Addendum in the form of Exhibit E, signed on behalf of such Lender.

(b) Repayment of Old Tranche C Term Loans and Other Amounts. The Parent Borrower (i) shall have paid in full (or converted in accordance with Section 2.1(b)) all Old Tranche C Term Loans made under the Existing Credit Agreement and (ii) shall have paid in full all accrued interest, fees and premium (if any) on the Old Tranche C Term Loans made under the Existing Credit Agreement.

(c) Projections. The Lenders shall have received satisfactory projections (including written assumptions) for the Parent Borrower and its Subsidiaries.

(d) Legal Opinions. The Administrative Agent shall have received legal opinions (addressed to the Administrative Agent and the Lenders and dated the Amendment/Restatement Effective Date) (i) from Fried, Frank, Harris, Shriver & Jacobson, counsel for the Parent Borrower, substantially in the form of Exhibit D-1, and (ii) from Christopher J. Kearney, General Counsel of the Parent Borrower, substantially in the form of Exhibit D-2. The Parent Borrower hereby requests each such counsel to deliver such opinions.

(e) Closing Certificates. The Administrative Agent shall have received, with a counterpart for each Lender, a certificate of each Loan Party, dated the Amendment/Restatement Effective Date, substantially in the form of Exhibit B, with appropriate insertions and attachments.

(f) Fees. The Administrative Agent and the Lenders shall have received all fees and other amounts due and payable on or prior to the Amendment/Restatement Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses (including fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party hereunder or under any other Loan Document. All such amounts will be paid with proceeds of Loans made on the Amendment/Restatement Effective Date and will be reflected in the funding instructions given by the Parent Borrower to the Administrative Agent on or before the Amendment/Restatement Effective Date.

(g) Consent and Confirmation. The Administrative Agent shall have received from the Parent Borrower and each Subsidiary Guarantor, the Consent and Confirmation signed on behalf of the Parent Borrower and each Subsidiary Guarantor.

(h) Insurance. The Administrative Agent shall have received evidence that the insurance required by Section 5.7 and the Security Documents is in effect.

(i) Consents. All consents and approvals, if any, required to be obtained from any Governmental Authority or other Person in connection with the Transactions shall have been obtained, and all applicable waiting periods and appeal periods shall have expired, in each case without the imposition of any burdensome conditions, except to the extent that the failure to obtain any such consent could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.2. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Lenders to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) In the case of any initial extension of credit made to a Foreign Subsidiary Borrower, the Administrative Agent shall have received a Foreign Subsidiary Opinion and such other documents and information with respect to such Foreign Subsidiary Borrower as the Administrative Agent may reasonably request.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Parent Borrower and the relevant Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.



AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Parent Borrower covenants and agrees with the Administrative Agent and the Lenders that:

SECTION 5.1. Financial Statements and Other Information. The Parent Borrower will furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year of the Parent Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Deloitte & Touche LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied; provided that delivery within the time period specified above of copies of the Annual Report on Form 10-K of the Parent Borrower filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 5.1(a);

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent Borrower, its consolidated balance sheet and related statements of operations for such fiscal quarter and the then elapsed portion of the fiscal year, and cash flows for the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Parent Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; provided that delivery within the time period specified above of copies of the Quarterly Report on Form 10-Q of the Parent Borrower filed with the Securities and Exchange Commission shall be deemed to satisfy the requirements of this Section 5.1(b);

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Parent Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.1, (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Parent Borrower's audited financial statements referred to in Section 3.4 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (iv) with respect to any Permitted Acquisition for which the aggregate Consideration is greater than or equal to \$50,000,000 and less than \$100,000,000 and for which a certificate has not been previously delivered to the Administrative Agent as required by the definition of Permitted Acquisition, certifying as to the matters specified in clause (a) of the proviso in such definition;

(d) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default or Event of Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) prior to the commencement of each fiscal year of the Parent Borrower, a consolidated budget for such fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flow as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, promptly when available, any significant revisions of such budget;

(f) no later than five days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification with respect to the Senior Note Indenture, any of the Subordinated Debt Documents or any of the Other Permitted Debt Documents;

(g) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Parent Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Parent Borrower to its shareholders generally, as the case may be; and

(h) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Parent Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.2. Notices of Material Events. The Parent Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

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

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Parent Borrower or any Affiliate thereof that could reasonably be expected to have a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Parent Borrower and its Subsidiaries in an aggregate amount exceeding \$50,000,000;

(d) any casualty or other insured damage to any material portion of any Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding that could reasonably be expected to reduce the value of the Collateral by an aggregate amount in excess of \$50,000,000; and

(e) any development that results in, or could reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Parent Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.3. Information Regarding Collateral. (a) The Parent Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's corporate name (ii) in the jurisdiction of organization of any Loan Party, (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. Unless the Parent Borrower shall have provided to the Administrative Agent at least 30 days' prior written notice of any such change, the Parent Borrower agrees not to effect or permit any change referred to in the preceding sentence until such time as all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent or the Collateral Agent, as applicable, to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral.

(b) On each Collateral Date, the Parent Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer of the Parent Borrower setting forth (i) the information required by Section 5.11 and (ii) a summary of any change referred to in the first sentence of paragraph (a) above that has occurred since the immediately preceding Collateral Date (or, in the case of the first Collateral Date, since the Effective Date).

SECTION 5.4. Existence; Conduct of Business. The Parent Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.4.

SECTION 5.5. Payment of Obligations. The Parent Borrower will, and will cause each of its Subsidiaries to, pay its material Indebtedness and other obligations, including material Tax liabilities, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Parent Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (d) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.6. Maintenance of Properties. The Parent Borrower will, and will cause each of its Subsidiaries to, keep and maintain all property material to the conduct of its business in good condition, ordinary wear and tear excepted.

SECTION 5.7. Insurance. The Parent Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurance companies (a) insurance in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required to be maintained pursuant to the Security Documents. The Parent Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.8. Books and Records; Inspection and Audit Rights. The Parent Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Parent Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 5.9. Compliance with Laws and Contractual Obligations. The Parent Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority (including Environmental Laws) and all Contractual Obligations applicable to it or its property, except where the failure to do so, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.10. Use of Proceeds and Letters of Credit. The proceeds of the Tranche B Incremental Term Loans made on the Amendment/Restatement Effective Date will be used only (a) to repay the Old Tranche C Term Loans and (b) to finance the payment of a portion of the fees and expenses payable in connection with the Transactions. The proceeds of the Revolving Loans and Swingline Loans, and the Letters of Credit, will be used only for working capital and general corporate purposes of the Parent Borrower and its Subsidiaries, including Permitted Acquisitions, Investments and Restricted Payments permitted hereby. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X.

SECTION 5.11. Additional Collateral. (a) On each Collateral Date, the Parent Borrower will notify the Administrative Agent of the identity of any Wholly Owned Subsidiary that is not already a Subsidiary Guarantor and promptly after such Collateral Date will (i) cause such Subsidiary (unless it is a Foreign Subsidiary or a Receivables Entity) to become a "Subsidiary Guarantor" under the Guarantee and Collateral Agreement, (ii) in the case of each such Subsidiary that is a Material Subsidiary, cause such Subsidiary (unless it is a Foreign Subsidiary or a Receivables Entity) to become a "Grantor" under each relevant Collateral Agreement, (iii) cause the Capital Stock of such Wholly Owned Subsidiary to be pledged pursuant to the relevant Collateral Agreement (except that, (A) if such Subsidiary is a Foreign Subsidiary, no Capital Stock of such Subsidiary shall be pledged unless such Subsidiary is a Material Subsidiary that is directly owned by the Parent Borrower or a Domestic Subsidiary, and then the amount of voting stock of such Subsidiary to be pledged pursuant to such Collateral Agreement may be limited to 66% of the outstanding shares of voting stock of such Subsidiary, and (B) if such Subsidiary is a Receivables Entity, no shares of Capital Stock of such Subsidiary shall be pledged if the documentation relating to the Receivables securitization to which such Receivables Entity is a party expressly prohibits such pledge) and (iv) except in the case of a Foreign Subsidiary or a Receivables Entity, take all steps required by the relevant Security Documents and this Agreement to create and perfect Liens in the relevant property of such Subsidiary; provided that the Parent Borrower and its Subsidiaries shall not be required to comply with the requirements of this Section 5.11(a) if the Administrative Agent, in its sole discretion, determines that the cost of such compliance is excessive in relation to the value of the collateral security to be afforded thereby.

(b) If, as of any Collateral Date, any property of the Parent Borrower, any Subsidiary Guarantor that is a "Grantor" under any Collateral Agreement or any Subsidiary that is required to become a "Grantor" pursuant to Section 5.11(a) (including any parcel of owned domestic real property having a fair market value in excess of \$10,000,000 but excluding all other real property) is not already subject to a perfected first priority Lien (except as permitted by Section 6.3) in favor of the

Administrative Agent or the Collateral Agent, as the case may be, the Parent Borrower will notify the Administrative Agent thereof, and, promptly after such Collateral Date, will cause such assets to become subject to a Lien under the relevant Security Documents and will take, and cause the relevant Subsidiary to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in Section 5.12, all at the expense of the Loan Parties; provided that the Parent Borrower and its Subsidiaries shall not be required to comply with the requirements of this Section 5.11(b) if the Administrative Agent, in its sole discretion, determines that the cost of such compliance is excessive in relation to the value of the collateral security to be afforded thereby.

(c) Notwithstanding anything to the contrary in this Section 5.11 or any other Loan Document, after the Release Date, no property other than Capital Stock shall be required to become Collateral.

(d) Notwithstanding anything to the contrary in this Section 5.11 or any other Loan Document, the Administrative Agent and the Lenders shall not have Liens on (and shall, at the request and expense of the Parent Borrower, timely release any Liens on): (i) the assets transferred to a Receivables Entity and assets of such Receivables Entity and (ii) if the documentation relating to the Receivables securitization to which such Receivables Entity is a party expressly prohibits such a Lien, the Capital Stock or debt (whether or not represented by promissory notes) of or issued by a Receivables Entity to the Parent Borrower or any of its Subsidiaries, in either case in connection with a Qualified Receivables Transaction or a European Receivables Securitization, as applicable, securing Indebtedness permitted by Section 6.2(n).

SECTION 5.12. Further Assurances. The Parent Borrower will, and will cause each of the Subsidiaries to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable law, or which the Administrative Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Parent Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 5.13. Interest Rate Protection. The Parent Borrower will maintain or enter into for a period of not less than three years after the Amendment/Restatement Effective Date one or more Hedging Agreements, the effect of which shall be to fix or limit the interest cost to the Parent Borrower with respect to at least 50% of the aggregate outstanding principal amount of the Term Loans, the LYONs, the Senior Notes, any Subordinated Debt and any Other Permitted Debt.

## ARTICLE VI

### NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Parent Borrower covenants and agrees with the Lenders that:

SECTION 6.1. Financial Condition Covenants. (a) Consolidated Leverage Ratio. The Parent Borrower will not permit the Consolidated Leverage Ratio as at the last day of any period of four consecutive fiscal quarters of the Parent Borrower to exceed 3.25 to 1.00.

(b) Consolidated Interest Coverage Ratio. The Parent Borrower will not permit the Consolidated Interest Coverage Ratio for any period of four consecutive fiscal quarters of the Parent Borrower to be less than 3.50 to 1.00.

SECTION 6.2. Indebtedness. The Parent Borrower will not, and will not permit any Subsidiary to, create, incur, assume (collectively, "Incur") or permit to exist (except as provided below) any Indebtedness, except:

(a) Indebtedness created under the Loan Documents;

(b) subordinated debt of the Parent Borrower (including any subordinated debt which extends, renews, replaces or is in exchange for existing subordinated debt of the Parent Borrower), so long as (i) such Indebtedness has no scheduled principal payments prior to the date that is six months after the Tranche B Maturity Date, (ii) the covenants and defaults, taken as a whole, contained in the Subordinated Debt Documents are not materially more restrictive than those contained in this Agreement, as agreed to by the Administrative Agent, and (iii) the Subordinated Debt Documents contain subordination terms that are no less favorable in any material respect to the Lenders than those applicable to offerings of "high-yield" subordinated debt by similar issuers of similar debt at or about the same time, as agreed to by the Administrative Agent;

(c) Indebtedness existing on the Amendment/Restatement Effective Date and set forth in Schedule 6.2 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(d) Indebtedness of the Parent Borrower to any Subsidiary and of any Subsidiary to the Parent Borrower or any other Subsidiary; provided that Indebtedness pursuant to this paragraph (d) of any Subsidiary that is not a Wholly Owned Subsidiary Guarantor shall be subject to Section 6.5;

(e) Indebtedness consisting of reimbursement obligations under surety, indemnity, performance, warranty, release and appeal bonds, bank guarantees, letters of credit, and guarantees of any of the foregoing in each case securing obligations not constituting Indebtedness for borrowed money and obtained in the ordinary course of business;

(f) Guarantees by the Parent Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Parent Borrower or any other Subsidiary; provided that (i) Guarantees pursuant to this paragraph (f) of Indebtedness of any Subsidiary that is not a Wholly Owned Subsidiary Guarantor shall be subject to Section 6.5, (ii) a Subsidiary shall not Guarantee the Indebtedness of any Loan Party unless such Subsidiary has also Guaranteed the Obligations pursuant to the Guarantee and Collateral Agreement and (iii) Guarantees pursuant to this paragraph (f) of Subordinated Debt shall be subordinated to the Guarantee of the Obligations pursuant to the Guarantee and Collateral Agreement on terms no less favorable to the Lenders than the subordination provisions of the Subordinated Debt;

(g) (i) Indebtedness of the Parent Borrower or any Subsidiary Incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease

Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof, provided that such Indebtedness (other than any such extension, renewal or replacement) is Incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) Attributable Debt in connection with Sale/Leaseback Transactions involving fixed or capital assets, in the case of either clause (i) or (ii) if at the time of Incurrence thereof, after giving effect thereto, the aggregate principal amount of all Specified Indebtedness shall not exceed an amount equal to 15% of the Total Consolidated Assets;

(h) Indebtedness of any Person that becomes a Subsidiary after the Amendment/Restatement Effective Date and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness (other than any such extension, renewal or replacement) exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and (ii) at the time of Incurrence thereof, after giving effect thereto, the aggregate principal amount of all Specified Indebtedness shall not exceed an amount equal to 15% of the Total Consolidated Assets;

(i) Indebtedness to finance the general working capital needs of the Parent Borrower and its Subsidiaries Incurred after the Domestic Revolving Maturity Date and the Global Revolving Maturity Date in an aggregate principal amount not to exceed the amount of the Revolving Commitments as in effect immediately prior to such date, provided that (i) the Revolving Commitments shall have been or shall concurrently be terminated, the Revolving Loans and Swingline Loans shall have been or shall concurrently be repaid in full and all Letters of Credit shall have been or shall concurrently be cancelled or replaced and (ii) the terms and conditions of such replacement working capital facility (including any arrangements for sharing of Collateral) shall be reasonably satisfactory to the Required Lenders (determined after giving effect to the termination of the Revolving Commitments);

(j) letters of credit or bank guarantees obtained in the ordinary course of business in an aggregate face amount not exceeding \$150,000,000 at any time outstanding (which may be secured), provided that, in the case of any such Indebtedness that is secured, at the time of Incurrence thereof, after giving effect thereto, the aggregate principal amount of all Specified Indebtedness shall not exceed an amount equal to 15% of the Total Consolidated Assets;

(k) Indebtedness of Foreign Subsidiaries and any other Subsidiary that is not a Loan Party if at the time of Incurrence thereof, after giving effect thereto, the aggregate principal amount of all Specified Indebtedness shall not exceed an amount equal to 15% of the Total Consolidated Assets (with the amount of Indebtedness under overdraft lines or cash management facilities being determined net of cash held for the benefit of the relevant Subsidiary by the institution creating such overdraft or cash management facility);

(l) (x) unsecured Indebtedness of the Parent Borrower (i) if on the date such Indebtedness is Incurred the Consolidated Leverage Ratio, on a pro forma basis after giving effect to the Incurrence of such Indebtedness (with the reference period for Consolidated EBITDA being the most recent period of four consecutive fiscal quarters for which the relevant financial information is available), is less than 3.0 to 1.0, in an unlimited amount and (ii) otherwise, in an aggregate principal amount not exceeding \$400,000,000 at any time outstanding, and (y) any extensions, renewals and replacements of any such Indebtedness that are Incurred by the Parent Borrower, that are unsecured and that do not increase the outstanding principal amount of such

Indebtedness, provided that, with respect to all Indebtedness permitted by this paragraph (l) (including any extension, renewal or replacement thereof), (A) such Indebtedness has no scheduled principal payments prior to the Tranche B Maturity Date, (B) the covenants and defaults, taken as a whole, contained in the documentation for such Indebtedness are not materially more restrictive than those contained in this Agreement, as agreed to by the Administrative Agent, (C) no Default or Event of Default shall have occurred and be continuing, or would occur after giving effect to the Incurrence of such Indebtedness, and (D) the Parent Borrower shall be in compliance, on a pro forma basis after giving effect to the Incurrence of such Indebtedness, with the covenants contained in Section 6.1, in each case recomputed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available as if such Incurrence had occurred on the first day of each relevant period for testing such compliance (as demonstrated in a certificate of a Financial Officer delivered to the Administrative Agent not more than two Business Days prior to such Incurrence);

(m) Indebtedness of the Parent Borrower consisting of LYONs and Guarantees of LYONs by Subsidiaries to the extent permitted by Section 6.5(e) (it being understood that the conversion described in clause (b) of the definition of "LYONs" shall be deemed to be a new Incurrence of Indebtedness and shall be permitted only if clauses (i) through (iv) of this paragraph (m) are satisfied at the time of such conversion) representing aggregate gross proceeds not exceeding \$820,000,000, provided that (i) such Indebtedness has no scheduled principal payments (it being acknowledged that any mandatory redemptions or conversions at the option of the holders of the LYONs pursuant to LYONs Put/Conversion Rights are not scheduled principal payments) prior to the date that is six months after the Tranche B Maturity Date, (ii) the covenants and defaults, taken as a whole, contained in the documentation for such Indebtedness are not materially more restrictive than those contained in this Agreement, as agreed to by the Administrative Agent, (iii) no Default or Event of Default shall have occurred and be continuing, or would occur after giving effect to the Incurrence of such Indebtedness and (iv) the Parent Borrower shall be in compliance, on a pro forma basis after giving effect to the Incurrence of such Indebtedness, with the covenants contained in Section 6.1, in each case recomputed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available as if such Incurrence had occurred (and, in the case of the conversion described in clause (b) of the definition of "LYONs", as if cash interest on the LYONs had become payable) on the first day of each relevant period for testing such compliance (as demonstrated in a certificate of a Financial Officer delivered to the Administrative Agent not more than two Business Days prior to such Incurrence);

(n) Receivables Transaction Attributed Indebtedness and all yield, interest, fees, indemnities and other amounts related thereto, provided that the related Qualified Receivables Transaction or European Receivables Securitization, as applicable, shall be subject to Section 6.6(c);

(o) Hedging Agreements, so long as such agreements are not entered into for speculative purposes; and

(p) other Indebtedness of any Loan Party in an aggregate principal amount not exceeding \$100,000,000 at any time outstanding (of which no more than \$50,000,000 may be secured), provided that, in the case of any such Indebtedness that is secured, at the time of Incurrence thereof, after giving effect thereto, the aggregate principal amount of all Specified Indebtedness shall not exceed an amount equal to 15% of the Total Consolidated Assets.



SECTION 6.3. Liens The Parent Borrower will not, and will not permit any Subsidiary to, Incur or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Receivables) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Parent Borrower or any Subsidiary existing on the Amendment/Restatement Effective Date and set forth in Schedule 6.3; provided that (i) such Lien shall not apply to any other property or asset of the Parent Borrower or any Subsidiary (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto) and (ii) such Lien shall secure only those obligations which it secures on the Amendment/Restatement Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) any Lien existing on any property prior to the acquisition thereof by the Parent Borrower or any Subsidiary or existing on any property of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property of the Parent Borrower or any Subsidiary (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto) and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(e) Liens on fixed or capital assets acquired, constructed or improved by the Parent Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by Section 6.2(g), (ii) such security interests and the Indebtedness secured thereby (other than extensions, renewals and replacements) are Incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Parent Borrower or any Subsidiary (other than improvements, accessions, proceeds, dividends or distributions in respect thereof and assets fixed or appurtenant thereto);

(f) Liens on Collateral securing Indebtedness permitted by Section 6.2(i);

(g) Liens on property of any Foreign Subsidiary or any other Subsidiary that is not a Loan Party securing Indebtedness of such Subsidiary permitted by Section 6.2(j) or (k);

(h) Liens on assets transferred to a Receivables Entity or on assets of a Receivables Entity, in either case Incurred in connection with a Qualified Receivables Transaction or a European Receivables Securitization, as applicable, securing Indebtedness permitted by Section 6.2(n);

(i) Liens not otherwise permitted by this Section securing Indebtedness expressly permitted to be secured by Section 6.2(p); and

(j) Liens not otherwise permitted by this Section securing obligations or liabilities (other than Indebtedness) in an amount not to exceed \$50,000,000.

It is understood that Liens pursuant to Sections 6.3(d), (e), (g), (h) and (i) may be Incurred only to the extent the corresponding Indebtedness is expressly permitted to be Incurred pursuant to Section 6.2.

SECTION 6.4. Fundamental Changes. The Parent Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing (a) any Person may merge into the Parent Borrower in a transaction in which the Parent Borrower is the surviving corporation, (b) any Person may merge or consolidate with any Wholly Owned Subsidiary Guarantor so long as the surviving entity is or becomes a Wholly Owned Subsidiary Guarantor, (c) any Subsidiary may Dispose of its assets to the Parent Borrower or any Wholly Owned Subsidiary Guarantor pursuant to a transaction of liquidation or dissolution, (d) the Parent Borrower or any Subsidiary may Dispose of any Subsidiary pursuant to a merger of such Subsidiary in a Disposition permitted by Section 6.6, (e) any Foreign Subsidiary or other Subsidiary that is not a Subsidiary Guarantor may merge or consolidate with any other Person so long as the surviving entity is a Subsidiary (provided that in the case of a merger or consolidation involving a Foreign Subsidiary Borrower, the surviving entity is a Borrower) or Dispose of its assets to any other Subsidiary pursuant to a transaction of liquidation or dissolution and (f) the Parent Borrower may merge or consolidate into any other Person so long as (i) the surviving entity assumes all the Obligations of the Parent Borrower hereunder and under the other Loan Documents pursuant to a written agreement satisfactory to the Administrative Agent, (ii) the surviving entity is organized under the laws of a jurisdiction within the United States of America, (iii) no Default or Event of Default shall have occurred and be continuing, or would occur after giving effect to such merger, (iv) the Parent Borrower shall be in compliance, on a pro forma basis after giving effect to such merger or consolidation, as applicable, with the covenants contained in Section 6.1, in each case recomputed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available as if such merger or consolidation had occurred on the first day of each relevant period for testing such compliance (as demonstrated in a certificate of a Financial Officer delivered to the Administrative Agent at least ten Business Days prior to such merger or consolidation) and (v) all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such merger or consolidation to have a valid, legal and perfected security interest in all the Collateral to the same extent as prior to such merger or consolidation. It is understood that no transaction pursuant to this Section 6.4 shall be permitted unless any Investment or Disposition made in connection therewith is also expressly permitted by Section 6.5 or 6.6, as applicable.

SECTION 6.5. Investments, Loans, Advances, Guarantees and Acquisitions. The Parent Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Wholly Owned Subsidiary prior to such merger) any Capital Stock of or evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (collectively, "Investments"), except:

(a) Permitted Investments;

(b) Investments existing on the Amendment/Restatement Effective Date and set forth on Schedule 6.5;

(c) intercompany Investments made by the Parent Borrower and its Subsidiaries in any Subsidiary (other than any Receivables Entity) that, prior to such Investment, is a Subsidiary; provided that, after giving effect to any such Investment made on a particular date, the aggregate amount of outstanding Investments by Loan Parties in or with respect to Subsidiaries (other than any Receivables Entity) that are not Wholly Owned Subsidiary Guarantors shall not exceed an amount equal to 10% of the Total Consolidated Assets (it being understood that the amount of any intercompany Investment made pursuant to this paragraph (c) in exchange for the forgiveness of any Indebtedness owing to the Person in which such Investment is made shall be determined net of the amount of such Indebtedness forgiven);

(d) loans and advances to employees of the Parent Borrower or any Subsidiary in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for the Parent Borrower and its Subsidiaries not to exceed \$20,000,000 at any one time outstanding;

(e) Guarantees constituting Indebtedness permitted by Section 6.2; provided that (i) a Subsidiary shall not Guarantee the Senior Notes, any Subordinated Debt, the LYONs or any Other Permitted Debt unless (A) such Subsidiary also has Guaranteed the Obligations pursuant to the Guarantee and Collateral Agreement, (B) in the case of any Guarantee of Subordinated Debt, such Guarantee of the Subordinated Debt is subordinated to such Guarantee of the Obligations on terms no less favorable to the Lenders than the subordination provisions of the Subordinated Debt and (C) such Guarantee provides for the release and termination thereof, without action by any party, upon Disposition of the relevant Subsidiary, (ii) the aggregate principal amount of Indebtedness of Subsidiaries that are not Wholly Owned Subsidiary Guarantors that is Guaranteed by any Loan Party shall be subject to the limitation set forth in paragraph (c) above and (iii) a Subsidiary shall not Guarantee the Indebtedness of any Loan Party unless such Subsidiary has also Guaranteed the Obligations pursuant to the Guarantee and Collateral Agreement;

(f) Permitted Acquisitions;

(g) Guarantees not constituting Indebtedness by the Parent Borrower and its Subsidiaries of the Contractual Obligations of the Parent Borrower or any Subsidiary;

(h) intercompany Investments in any Wholly Owned Subsidiary created by the Parent Borrower or any of its Subsidiaries in connection with any corporate restructuring, provided that (A) such newly-created Subsidiary is, or contemporaneously with the consummation of such restructuring becomes, a Wholly Owned Subsidiary Guarantor, (B) all property transferred to such newly-created Subsidiary that constituted Collateral shall continue to constitute Collateral as to which the Collateral Agent has a first priority perfected security interest, subject to Permitted Encumbrances, and (C) contemporaneously with the consummation of such restructuring (i) the Capital Stock and assets of such newly-created Subsidiary are pledged under the relevant Security Documents (except to the extent that any of the foregoing would not otherwise be required pursuant to Section 5.11 to be so pledged on the next succeeding Collateral Date) and (ii) the Parent Borrower takes, and causes the relevant Subsidiary to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in Section 5.12, all at the expense of the Loan Parties;

(i) additional Investments in the Emerson JV in an aggregate amount from May 24, 2001 through and including the date of such Investment not to exceed \$75,000,000;

(j) Investments financed with Capital Stock of the Parent Borrower; provided that (i) the Parent Borrower shall be in compliance, on a pro forma basis after giving effect to such Investment, with the covenants contained in Section 6.1, in each case recomputed as at the last day of the most recently ended fiscal quarter of the Parent Borrower for which the relevant information is available as if such Investment had occurred on the first day of each relevant period for testing such compliance (as demonstrated, in the case of any Investment for which the aggregate cost is greater than or equal to \$100,000,000, in a certificate of a Financial Officer delivered to the Administrative Agent prior to the consummation of such Investment) and (ii) no Default or Event of Default shall occur after giving effect to such Investment;

(k) Investments comprised of capital contributions (whether in the form of cash, a note or other assets) to a Receivables Entity or otherwise resulting from transfers of assets permitted by Section 6.6(c) to such Receivables Entity; and

(l) Investments that are not permitted by any other paragraph of this Section, so long as, after giving effect to any such Investment, the aggregate amount of Investments (valued at cost) at any one time outstanding shall not exceed \$150,000,000.

SECTION 6.6. Disposition of Assets. The Parent Borrower will not, and will not permit any of its Subsidiaries to, Dispose of any asset, including any Capital Stock owned by it (other than Capital Stock of the Parent Borrower held in treasury by the Parent Borrower), nor will the Parent Borrower permit any of its Subsidiaries to issue any additional Capital Stock of such Subsidiary, except:

(a) (i) sales of inventory, obsolete or worn out equipment and Permitted Investments and (ii) leases or licenses of real or personal property, in each case in the ordinary course of business;

(b) Dispositions to the Parent Borrower or a Subsidiary; provided that any such Dispositions by a Loan Party to a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.5;

(c) sales of Receivables and related assets or an interest therein (i) of the type specified in the definition of "Qualified Receivables Transaction" pursuant to a Qualified Receivables Transaction, provided that (A) each such transaction shall be a Qualified Receivables Transaction, as agreed by the Administrative Agent, and (B) the aggregate amount of Receivables Transaction Attributed Indebtedness at any time outstanding in respect of all such Qualified Receivables Transactions permitted by this clause (i) shall not exceed \$250,000,000 and (ii) in connection with a European Receivables Securitization, provided that the Dollar Equivalent of the aggregate amount of Receivables Transaction Attributed Indebtedness at any time outstanding in respect of all such European Receivables Securitizations shall not exceed \$50,000,000;

(d) Dispositions of assets that are not permitted by any other paragraph of this Section; provided that (i) the aggregate gross proceeds (including any non-cash proceeds, determined on the basis of face amount in the case of notes or similar consideration and on the basis of fair market value in the case of other non-cash proceeds) of all assets Disposed of in reliance upon this paragraph (d) shall not exceed, (A) during the period commencing on the Amendment/Restatement Effective Date and ending on December 31, 2003, an amount equal to the sum of (x) 10% of the Total Consolidated Assets and (y) \$300,000,000 of amounts carried over from the 2002 fiscal year pursuant to Section 6.6(d) of the Existing Credit Agreement and (B) in the case of any fiscal year of the Parent Borrower thereafter, 10% of the Total Consolidated Assets (provided, that (x) any such amount referred to in this clause (i), if not so utilized in the

fiscal year (or period) for which it is permitted, may be carried over for utilization in the next succeeding fiscal year and (y) Dispositions made pursuant to this paragraph during any fiscal year shall be deemed made, first, in respect of amounts permitted for such fiscal year as provided in this clause (i) and, second, in respect of amounts carried over from the prior fiscal year (or period) pursuant to clause (x) above; and (ii) all Dispositions permitted by this paragraph (d) shall be made for fair value and for at least 75% cash consideration; and

(e) Dispositions by the Parent Borrower of all or any portion of its interest in the Emerson JV; provided that all Dispositions permitted by this paragraph (e) shall be made for fair value and for at least 85% cash consideration.

For purposes of paragraphs (d) and (e) of this Section 6.6,

(i) the following will be deemed to be cash:

(A) the assumption by the transferee of Indebtedness (other than subordinated Indebtedness or preferred stock) of the Parent Borrower or of any Subsidiary (in which case, the Parent or such Subsidiary will, without further action, be deemed to have applied such deemed cash to Indebtedness in accordance with clause (b)(ii) of the definition of "Net Proceeds"), provided that the amount of assumed Indebtedness that is deemed to be cash shall not exceed \$200,000,000 in the aggregate from and after the Amendment/Restatement Effective Date;

(B) securities, notes or other obligations received by the Parent Borrower or any Subsidiary from the transferee that are promptly (subject to ordinary settlement periods) converted, sold or exchanged within 30 days of receipt thereof by the Parent Borrower or such Subsidiary into cash (to the extent of the cash received in such conversion, sale or exchange); and

(C) in the case of any particular Disposition, promissory notes received by the Parent Borrower or any Subsidiary from the transferee having an aggregate principal amount not to exceed \$10,000,000; and

(ii) in the case of a Disposition consisting of an Asset Swap, the Parent Borrower or such Subsidiary shall only be required to receive cash in an amount equal to at least 75% of the proceeds of such Disposition which are not part of the Asset Swap, provided that at the time of such Asset Swap, after giving effect thereto, the aggregate fair value (as determined at the time of such related Asset Swap and not subject to later revaluation) of the assets of the Parent Borrower and its Subsidiaries that are the subject of all such Asset Swaps from and after the Amendment/Restatement Effective Date shall not exceed an amount equal to 15% of the Total Consolidated Assets.

SECTION 6.7. Sale and Leaseback Transactions. The Parent Borrower will not, and will not permit any Subsidiary to, enter into any arrangement (each, a "Sale/Leaseback Transaction") providing for the leasing to the Parent Borrower or any Subsidiary of real or personal property that has been or is to be (a) sold or transferred by the Parent Borrower or any Subsidiary or (b) constructed or acquired by a third party in anticipation of a program of leasing to the Parent Borrower or any Subsidiary, in each case unless the Attributable Debt resulting therefrom is permitted by Section 6.2(d) or 6.2(g).

SECTION 6.8. Restricted Payments. The Parent Borrower will not, and will not permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or Incur any obligation (contingent or otherwise) to do so, except:

(a) the Parent Borrower may (i) declare and pay dividends with respect to its Capital Stock payable solely in shares of its Capital Stock or (ii) make other distributions or payments payable solely in shares of its Capital Stock;

(b) any Wholly Owned Subsidiary may declare and pay Restricted Payments to its immediate parent;

(c) any non-Wholly Owned Subsidiary may declare and pay dividends ratably with respect to its Capital Stock;

(d) the Parent Borrower may make Restricted Payments, not exceeding \$10,000,000 during any fiscal year, pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Parent Borrower and its Subsidiaries;

(e) from and after the Amendment/Restatement Effective Date, the Parent Borrower may repurchase its Capital Stock, provided that if the Consolidated Leverage Ratio, on a pro forma basis immediately after giving effect to such repurchase (with the reference period for Consolidated EBITDA being the most recent period of four consecutive fiscal quarters for which the relevant financial information is available) is

(i) greater than or equal to 3.00 to 1.00, the aggregate amount of such repurchases pursuant to this Section 6.6(e) shall not exceed \$100,000,000,

(ii) greater than or equal to 2.00 to 1.00 but less than 3.00 to 1.00, the aggregate amount of such repurchases pursuant to this Section 6.6(e) shall not exceed (A) the sum of (x) \$200,000,000 and (y) a positive amount equal to 50% of cumulative Consolidated Net Income during the period from October 1, 2002 to the end of the most recent fiscal quarter for which financial information is available preceding the date of such repurchase (or, in case such Consolidated Net Income is a deficit, minus 100% of such deficit) minus (B) an amount equal to the aggregate amount of dividends in excess of \$75,000,000 paid by the Parent Borrower in any fiscal year in reliance on Section 6.8(g), and

(iii) less than 2.00 to 1.00, the aggregate amount of such repurchases pursuant to this Section 6.6(e) shall be unlimited.

(f) the Parent Borrower or any Subsidiary may make Restricted Payments to the extent required by the terms of its joint venture or similar agreements relating to non-Wholly Owned Subsidiaries, provided that no such Restricted Payment shall be permitted by this clause (f) unless any Investment made in connection therewith is also expressly permitted by Section 6.5;

(g) the Parent Borrower may pay cash dividends to the holders of its Capital Stock; provided that (i) such dividends shall be paid within 60 days after the date of declaration thereof and (ii) the aggregate amount of all dividends declared in any fiscal year may not exceed the sum of (A) \$75,000,000 and (B) a positive amount equal to 50% of Consolidated Net Income for the immediately preceding fiscal year for which the relevant financial information is available; provided further that in the event that the Parent Borrower repurchased Capital Stock in such

immediately preceding fiscal year utilizing Consolidated Net Income for such fiscal year as permitted by Section 6.8(e)(ii)(A)(y), the aggregate amount expended in such fiscal year to effect such repurchases shall be deducted from the amount referred to in clause (B) above for such fiscal year;

(h) the Parent Borrower may redeem the LYONs (i) through the issuance of common stock of the Parent Borrower, (ii) through the issuance of Indebtedness of the type described in clause (b) or (c) of the definition of "LYONs", (iii) with the Net Proceeds of the issuance of the Senior Notes (it being acknowledged that the Parent Borrower has redeemed LYONs with the Net Proceeds of the issuance of the Senior Notes if the Parent Borrower redeems LYONs in an amount that does not exceed the Net Proceeds from the issuance of the Senior Notes) and (iv) with cash in an amount not to exceed \$100,000,000 plus, in the case of this clause (iv), the amount which would accrete from the Amendment/Restatement Effective Date through the date of redemption on an equivalent face amount of LYONs at the rate of 2.75% per annum compounded in accordance with the terms of the LYONs;

(i) the Parent Borrower or any Subsidiary that is permitted to guarantee the LYONs may pay required interest payments in respect of LYONs of the type described in clause (b) of the definition thereof; and

(j) the Parent Borrower or any Subsidiary that is permitted to guarantee the LYONs may pay LYONs Contingent Interest.

For the purposes of this Section 6.8, redemptions of the LYONs shall include purchases thereof and payments required to be made in connection with the conversion thereof.

SECTION 6.9. Payments of Certain Indebtedness; Certain Derivative Transactions. The Parent Borrower will not, nor will it permit any Subsidiary to, (a) make or agree or offer to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Debt, or any payment or other distribution (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 Subordinated Debt, except (i) extensions, renewals, replacements or exchanges of any Subordinated Debt permitted by Section 6.2(b), (ii) the payment of regularly scheduled interest and principal payments as and when due in respect of any Subordinated Debt and (iii) any purchase or other acquisition of any Subordinated Debt made in consideration for (or with the proceeds of) the issuance of common stock of the Parent Borrower, other than, in each of clauses (ii) and (iii), any such payments, purchases or other acquisitions of the Subordinated Debt prohibited by the subordination provisions thereof or (b) enter into any derivative transaction or similar transaction obligating the Parent Borrower or any of its Subsidiaries to make payments to any other Person as a result of a change in market value of any Subordinated Debt or LYONs.

SECTION 6.10. Transactions with Affiliates. The Parent Borrower will not, and will not permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) transactions that are at prices and on terms and conditions, taken as a whole, not less favorable to the Parent Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties;

- (b) transactions between or among the Parent Borrower and the Subsidiaries (other than a Receivables Entity) not involving any other Affiliate;
- (c) any Restricted Payment permitted by Section 6.8;
- (d) any Qualified Receivables Transaction or European Receivables Securitization, in each case expressly permitted by Section 6.6(c); and
- (e) any other transaction expressly permitted by Section 6.5.

SECTION 6.11. Restrictive Agreements. The Parent Borrower will not, and will not permit any Foreign Subsidiary Borrower or any Wholly Owned Subsidiary Guarantor to, directly or indirectly, enter into, Incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Parent Borrower or any Subsidiary to create, Incur or permit to exist any Lien upon any of its property, (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Parent Borrower or any other Subsidiary or to Guarantee Indebtedness of the Parent Borrower or any other Subsidiary or (c) the ability of any Subsidiary to transfer any of its assets to the Parent Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law, Permitted Encumbrances, any Loan Document, the Senior Note Indenture, any Subordinated Debt Document or any Other Permitted Debt Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Amendment/Restatement Effective Date identified on Schedule 6.11 (but shall apply to any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is (or the assets that are) to be sold and such sale is permitted hereunder, (iv) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to a Qualified Receivables Transaction or relating to a European Receivables Securitization, in each case permitted by this Agreement if such restrictions or conditions apply only to the relevant Receivables Entity, (v) clauses (a) and (c) above shall not apply to restrictions and conditions contained in documentation relating to a Subsidiary acquired in a Permitted Acquisition, provided that such restriction or condition (x) existed at the time such Person became a Subsidiary, (y) was not created in contemplation of or in connection with such Person becoming a Subsidiary and (z) applies only to such Subsidiary, (vi) clauses (a), (b) and (c) above shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (vii) clauses (a) and (c) above shall not apply to customary provisions in leases and other contracts restricting the assignment thereof and (viii) clauses (a), (b) and (c) above shall not apply to customary provisions in purchase money obligations for property acquired in the ordinary course of business, Capital Leases Obligations, industrial revenue bonds or operating leases that impose encumbrances or restrictions on the property so acquired or covered thereby, restrictions on cash or other deposits or net worth required by customers under contracts entered into in the ordinary course of business and joint venture agreements or other similar arrangements if such provisions apply only to the Person (and the equity interests in such Person) that is the subject thereof.

SECTION 6.12. Amendment of Material Documents, etc. The Parent Borrower will not, and will not permit any Subsidiary to, (a) amend, modify, supplement or waive in any respect that is material and adverse to the Lenders any of its rights under the Senior Note Indenture, any Subordinated Debt Document, any LYONs Documents or any Other Permitted Debt Documents (it being understood, however, that any amendment to provide Guarantees in respect of the Senior Notes, the LYONs, any Subordinated Debt or any Other Permitted Debt, which Guarantees are permitted by this Agreement, would not constitute such an amendment) or (b) designate any Indebtedness (other than obligations of the Loan Parties pursuant to the Loan Documents) as "Designated Senior Indebtedness" (or any comparable concept) that controls payment blockages for the purposes of the Subordinated Debt Documents.



ARTICLE VII

EVENTS OF DEFAULT

If any of the following events ("Events of Default") shall occur:

- (a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five days;
- (c) any representation or warranty made or deemed made by or on behalf of the Parent Borrower or any Subsidiary in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been materially incorrect when made or deemed made;
- (d) the Parent Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.2, 5.4 (with respect to the existence of any Borrower) or 5.10 or in Article VI;
- (e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof to the Parent Borrower from the Administrative Agent or the Required Lenders;
- (f) the Parent Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, after the passage of any cure period provided in such Indebtedness;
- (g) (i) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with the giving of notice, if required) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity (including, in any event, an "Event of Default" under and as defined in the Senior Note Indenture, any Subordinated Debt Documents or any Other Permitted Debt Documents) but excluding, in any event, (A) any mandatory redemptions or conversions at the option of the holders of the LYONs pursuant to LYONs Put/Conversion Rights and (B) after the Term Loans have been paid in full, any mandatory repurchases of the Senior Notes (and any other Indebtedness that ranks pari passu in right of payment to the Obligations) made in accordance with the Senior Note Indenture or any Other Permitted Debt Document with "Excess Proceeds" from any "Asset Disposition" pursuant to a required "Asset Disposition Offer" (as each such term is defined in the Senior Note

Indenture) (or any comparable concept in any Other Permitted Debt Document), or (ii) any event or condition occurs that results in an automatic termination, winddown or comparable event with respect to any Qualified Receivables Transaction or any European Receivables Securitization or permits a notice of termination, a notice of winddown or any comparable notice to be given under any such Qualified Receivables Transaction or European Receivables Securitization, provided that an event or condition described in clause (ii) of this paragraph (g) shall not at any time constitute an Event of Default unless, at such time, one or more events or conditions of the type described in clauses (i) and (ii) of this paragraph (g) shall have occurred and be continuing with respect to Material Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Parent Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Parent Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Parent Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$50,000,000 shall be rendered against the Parent Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Parent Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to have a Material Adverse Effect;

(m) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party or any Affiliate of any Loan Party shall so assert;

(n) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any Affiliate of any Loan Party not to be, a valid and perfected Lien on any Collateral (other than immaterial Collateral), with the priority required by the applicable Security Document;

(o) the Subordinated Debt or any Guarantees thereof shall cease, for any reason, to be validly subordinated to the Obligations or the obligations of the Subsidiary Guarantors under the Guarantee and Collateral Agreement, as the case may be, as provided in the Subordinated Debt Documents, or any Loan Party, any Affiliate of any Loan Party, the trustee in respect of the Subordinated Debt or the holders of at least 25% in aggregate principal amount of the Subordinated Debt shall so assert; or

(p) a Change of Control shall occur;

then, and in every such event (other than an event with respect to any Borrower described in paragraph (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Parent Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower; and in case of any event with respect to any Borrower described in paragraph (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower.

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT

Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. For the purposes of Article 2692 of the Civil Code of Quebec and without limiting the generality of the foregoing, each Canadian Lender hereby irrevocably designates and appoints each of the Administrative Agent and the Collateral Agent in its capacity as agent and holder of a power of attorney of each such Canadian Lender under this Agreement and the other Loan Documents.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Parent Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the

circumstances as provided in Section 9.2), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Parent Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.2) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Parent Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for any Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor to the Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders and the Parent Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Parent Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by any Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Parent Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.3 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any other Lender or any of their respective affiliates and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or any of their respective affiliates and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

Neither the Syndication Agent nor any Documentation Agent shall have any duties or responsibilities hereunder in its capacity as such.

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 9.1. Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Parent Borrower, to it at 13515 Ballantyne Corporate Place, Charlotte, North Carolina 28277, attention of Treasurer and Chief Financial Officer (Telecopy No. 704-752-7487), and if to any Foreign Subsidiary Borrower, to it at its address (or telecopy number) specified in the relevant Borrowing Subsidiary Agreement with a copy to the Parent Borrower at its address (or telecopy number) specified above;

(b) if to the Administrative Agent, as applicable, (i) to Chase Manhattan International Limited, 125 London Wall, London, England, Attention of Steve Clarke (Telecopy No. 44-207-777-2360/2085), (ii) to The Bank of Nova Scotia, 44 King Street West, Toronto, Ontario, Canada M5H 1H1, attention of John Hall (Telecopy No. 416-866-5991), or (iii) to JPMorgan Chase Bank, Agent Bank Services Group, 111 Fannin, Tenth Floor, Houston, Texas 77002, attention of Dakisha Allen (Telecopy No. 713-750-2932), in each case with a copy to JPMorgan Chase Bank, 270 Park Avenue, New York, New York 10017, Attention of Tina Ruyter (Telecopy No. 212-270-5120); and

(c) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

SECTION 9.2. Waivers; Amendments. (a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of or subordinate the principal of any Loan or LC Disbursement, or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive, excuse or subordinate any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) require any Lender to make Loans having an Interest Period of one year or longer, without the written consent of such Lender, (v) reduce the amount of Net Proceeds required to be applied to prepay Loans under this Agreement, without the written consent of the Majority Facility Lenders under each Facility, (vi) amend, modify or waive any provision of this Agreement in any manner that would change the application of mandatory prepayments hereunder without the written consent of the Majority Facility Lenders in respect of each Facility adversely affected thereby, (vii) amend, modify or waive any provision of Section 2.12 without the written consent of the Majority Facility Lenders in respect of each Facility adversely affected thereby, (viii) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (ix) release or subordinate all or substantially all of the Guarantees from the Guarantors under the Guarantee and Collateral Agreement (except as expressly provided in the Loan Documents), without the written consent of each Lender, or (x) release or subordinate all or substantially all of the Liens of the Security Documents on the Collateral (except as expressly provided in the Loan Documents), without the written consent of each Lender.

(c) In addition, notwithstanding the foregoing, this Agreement may be amended with the written consent of the Administrative Agent, the Parent Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Tranche A Term Loans or all outstanding Tranche B Term Loans ("Refinanced Term Loans") with a replacement

“A” or “B” term loan tranche hereunder (“Replacement Term Loans”), provided that (i) the aggregate principal amount of such Replacement Term Loans shall not exceed the aggregate principal amount of such Refinanced Term Loans, (ii) the Applicable Rate for such Replacement Term Loans shall not be higher than the Applicable Rate for such Refinanced Term Loans, (iii) the weighted average life to maturity of such Replacement Term Loans shall not be shorter than the weighted average life to maturity of such Refinanced Term Loans at the time of such refinancing and (iv) all other terms applicable to such Replacement Term Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Term Loans than, those applicable to such Refinanced Term Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Term Loans in effect immediately prior to such refinancing.

SECTION 9.3. Expenses; Indemnity; Damage Waiver. (a) The Parent Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including the reasonable fees and disbursements of counsel to the Administrative Agent, with statements with respect to the foregoing to be submitted to the Parent Borrower prior to the Amendment/Restatement Effective Date (in the case of amounts to be paid on the Amendment/Restatement Effective Date) and from time to time thereafter on a quarterly basis or such other periodic basis as the Administrative Agent shall deem appropriate, (ii) all reasonable out-of-pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Parent Borrower shall indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery, enforcement, performance and administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Lender 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), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Parent Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses 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.

(c) To the extent that the Parent Borrower fails to pay any amount required to be paid by it to the Administrative Agent, any Issuing Lender or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Issuing Lender or the Swingline Lender, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Issuing Lender or the Swingline Lender in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the sum of the total Revolving Exposures, outstanding Term Loans and unused Commitments at the time; provided that in the case of amounts owing to any Issuing Lender or the Swingline Lender, in each case in its capacity as such, a Lender's "pro rata" share shall be determined based solely upon its share of the sum of Domestic Revolving Exposures and unused Domestic Revolving Commitments at the time.

(d) To the extent permitted by applicable law, no Borrower shall assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than 15 days after written demand therefor. Statements payable by the Parent Borrower pursuant to this Section shall be sent to Attention of Treasurer and Chief Financial Officer (Telephone No. 704-752-4400) (Telecopy No. 704-752-7487), at the address of the Parent Borrower set forth in Section 9.1, or to such other Person or address as may be hereafter designated by the Parent Borrower in a written notice to the Administrative Agent.

**SECTION 9.4. Successors and Assigns; Participations and Assignments.** (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 a Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower without such consent 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 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (i) except in the case of an assignment to a Lender or a Lender Affiliate, each of the Parent Borrower and the Administrative Agent must give their prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed), provided that the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) shall be required for any assignment to an assignee in respect of any Revolving Facility which does not have a commitment in respect of such Revolving Facility immediately prior to giving effect to such assignment, (ii) except in the case of an assignment to a Lender or a Lender Affiliate or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not (x) in the case of an assignment of a Revolving Commitment, Revolving Loan or Tranche A Term Loan, be less than \$5,000,000, and (y) in the case of an assignment of a Tranche B Term Loan, be less than \$1,000,000,



unless the Parent Borrower and the Administrative Agent otherwise consent, (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500, (iv) the assignee, if not already a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, (v) no assignment of Global Revolving Commitments or Global Revolving Loans may be made to an assignee that cannot make Loans in each of the Qualified Global Currencies (other than Canadian dollars) and (vi) no assignment of Canadian Commitments or Canadian Dollar Loans may be made to an assignee that cannot make Loans in each of the Qualified Global Currencies; and provided further that any consent of any Borrower otherwise required under this paragraph shall not be required if an Event of Default under paragraph (a), (b), (h) or (i) of Article VII has occurred and is continuing. Any such assignment need not be ratable as among the Facilities. Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance 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 2.16, 2.17, 2.18 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 paragraph (e) of this Section.

(c) The Administrative Agent, acting for this purpose as an agent of the Parent Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans (whether or not evidenced by a promissory note) and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and each Borrower, 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.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph. Any assignment or transfer of all or part of a Loan evidenced by a promissory note shall be registered as to both principal and interest on the Register only upon surrender for registration of assignment or transfer of the promissory note evidencing such loan, accompanied by a duly executed Assignment and Acceptance, and thereupon one or more new promissory notes in the same aggregate principal amount shall be issued to the designated Assignee and the old promissory notes shall be returned by the Administrative Agent to the Parent Borrower marked "cancelled".

(e) Any Lender may, without the consent of any Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the 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) each Borrower, the Administrative Agent and the Lenders shall continue to

deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Loans or any fees payable hereunder, or postpone the date of the final maturity of the Loans, in each case to the extent subject to such participation. Subject to paragraph (f) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.16, 2.17 and 2.18 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section, provided that, in the case of Section 2.18, such Participant shall have complied with the requirements of said section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided such Participant agrees to be subject to Section 2.19(c) as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.16 or 2.18 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 Parent Borrower's prior written consent.

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that any foreclosure or similar action by such pledgee or assignee shall be subject to the provisions of this Section 9.4 concerning assignments; and provided, further that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of any Borrower or the Administrative Agent, assign or pledge all or any portion of its rights under this Agreement and/or pledge all or any portion of any instrument evidencing its rights as a Lender under this Agreement to any trustee for, or any other representative of, holders of obligations owed or securities issued, by such fund, as security for such obligations or securities; provided that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of this Section 9.4 concerning assignments.

SECTION 9.5. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.16, 2.17, 2.18 and 9.3 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.6. Counterparts; Integration. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan

Document and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto (including the Lenders) and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.7. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.8. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, 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 and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of a Borrower against any of and all the obligations of a Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.9. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Borrower or its properties in the courts of any jurisdiction.

(c) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section, (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and (iii) any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages (as opposed to direct or actual damages).

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. In addition, each Foreign Subsidiary Borrower agrees that

service of process may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Parent Borrower at its address for notices in Section 9.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. Acknowledgements. Each Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent and Lenders, on one hand, and the Borrowers, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrowers and the Lenders.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. 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 Related Parties, 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 Governmental Authority or rating agency, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, 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 any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) to any direct or indirect contractual counterparty in Hedging Agreements or other swap agreements relating to this Agreement or such counterparty's professional advisor, (h) with the consent of the Parent Borrower, and (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than a Borrower. For the purposes of this Section, "Information" means all information received from any Borrower relating to a Borrower or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by such Borrower; provided that 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.

SECTION 9.13. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY

ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.14. Release of Collateral. On the first date (the "Release Date") on which the outstanding Indebtedness under this Agreement is rated "Baa3" or better by Moody's and "BBB-" or better by S&P, so long as no Event of Default exists on such date, all Collateral (other than Pledged Stock (as defined in each of the Guarantee and Collateral Agreement)) shall be released from the Liens created by the Guarantee and Collateral Agreement (all such released Collateral being the "Released Collateral"), all without delivery of any instrument or performance of any act by any party, and all rights to the Released Collateral shall revert to the Loan Parties. At the request and sole expense of any Loan Party following any such release, the Collateral Agent shall deliver to such Loan Party any Released Collateral held by the Collateral Agent under the Guarantee and Collateral Agreement, and execute and deliver to such Loan Party such documents as such Loan Party shall reasonably request to evidence such release.

SECTION 9.15. Amendment of Guarantee and Collateral Agreement. Each party hereto, by its execution and delivery of this Agreement or an Addendum in the form of Exhibit E, hereby consents to the amendment to the Guarantee and Collateral Agreement provided for in the Consent and Confirmation.

SECTION 9.16. Judgment Currency. (a) The Borrowers' obligations hereunder and under the other Loan Documents to make payments in a specified currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent or a Lender of the full amount of the Obligation Currency expressed to be payable to the Administrative Agent or such Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent) determined, in each case, as of the Business Day immediately preceding the date on which the judgment is given (such Business Day being hereinafter referred to as the "Judgment Currency Conversion Date").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Borrowers covenant and agree to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange or currency equivalent for this Section, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 9.17. Effect of Amendment and Restatement of the Existing Credit Agreement. On the Amendment/Restatement Effective Date, the Existing Credit Agreement shall be amended and restated in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the “Obligations” (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Amendment/Restatement Effective Date and which remain outstanding, (b) such “Obligations” are in all respects continuing (as amended and restated hereby), (c) the Liens and security interests as granted under the Security Documents securing payment of such “Obligations” are in all respects continuing and in full force and effect and (d) references in the Security Documents to the “Credit Agreement” shall be deemed to be references to this Agreement, and to the extent necessary to effect the foregoing, each such Security Document is hereby deemed amended accordingly.

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

SPX CORPORATION

By /s/ Christopher J. Kearney

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Name: Christopher J. Kearney  
Title: Vice President

JPMORGAN CHASE BANK,  
as Administrative Agent

By /s/ Tina Ruyter

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Name: Tina Ruyter  
Title: Vice President

THE BANK OF NOVA SCOTIA,  
as Syndication Agent

By /s/ William E. Zarrett

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Name: William E. Zarrett  
Title: Managing Director

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

By /s/ Richard C. Hardison

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Name: Richard C. Hardison  
Title: Vice President

BANK ONE, NA,  
as Documentation Agent

By /s/ Jack V. West Jr.

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Name: Jack V. West, Jr.  
Title: Director

WACHOVIA BANK N.A.,  
as Documentation Agent

By /s/ Brian D. Smith

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Name: Brian D. Smith  
Title: Associate

THE BANK OF NOVA SCOTIA,  
as Canadian Administrative Agent

By /s/ Eric W. Read

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Name: Eric W. Read

Title: Director



**Certification**

I, John B. Blystone, certify that:

1. I have reviewed this report on Form 10-Q of SPX Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
  - c. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2003

/s/ JOHN B. BLYSTONE

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**Chairman, President and Chief Executive Officer**

## Certification

I, Patrick J. O'Leary, certify that:

1. I have reviewed this report on Form 10-Q of SPX Corporation;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
  - c. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting, which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2003

/s/ PATRICK J. O'LEARY

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**Vice President Finance, Treasurer and  
Chief Financial Officer**

**The following statement is being made to the Securities and Exchange Commission solely for purposes of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), which carries with it certain criminal penalties in the event of a knowing or willful misrepresentation.**

Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

Re: SPX Corporation

Ladies and Gentlemen:

In accordance with the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), each of the undersigned hereby certifies that:

- (i) this Quarterly Report on Form 10-Q, for the period ended September 30, 2003 fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of SPX Corporation.

Dated as of this 27th day of October 2003.

/s/ JOHN B. BLYSTONE

/s/ PATRICK J. O'LEARY

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**John B. Blystone**  
Chairman, President and Chief Executive Officer

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**Patrick J. O'Leary**  
Vice President, Finance, Treasurer and Chief Financial Officer

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