



UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 30, 2002

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-10948

OFFICE DEPOT, INC.

\_\_\_\_\_  
(Exact name of registrant as specified in its charter)

Delaware

59-2663954

\_\_\_\_\_  
(State or other jurisdiction of  
incorporation or organization)

\_\_\_\_\_  
(I.R.S. Employer  
Identification No.)

2200 Old Germantown Road; Delray Beach, Florida

33445

\_\_\_\_\_  
(Address of principal executive offices)

\_\_\_\_\_  
(Zip Code)

(561) 438-4800

\_\_\_\_\_  
(Registrant's telephone number, including area code)

\_\_\_\_\_  
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

The registrant had 308,343,708 shares of common stock outstanding as of April 25, 2002.

## FINANCIAL STATEMENTS

**OFFICE DEPOT, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share and per share amounts)  
(Unaudited)

|   | As of<br>March 30,<br>2002 | As of<br>December 29,<br>2001 |
|---|----------------------------|-------------------------------|
| <b>Assets</b>   |                            |                               |
| Current assets:   |                            |                               |
| Cash and cash equivalents   | \$ 844,628                 | \$ 563,410                    |
| Receivables, net  | 763,953                    | 781,476                       |
| Merchandise inventories, net  | 1,025,793                  | 1,259,522                     |
| Deferred income taxes and other current assets  | 152,330                    | 148,490                       |
| Prepaid expenses  | 59,887                     | 53,292                        |
|   | <hr/>                      | <hr/>                         |
| Total current assets  | 2,846,591                  | 2,806,190                     |
| Property and equipment, net   | 1,102,879                  | 1,110,011                     |
| Goodwill, net   | 244,162                    | 244,259                       |
| Other assets  | 170,361                    | 171,183                       |
|   | <hr/>                      | <hr/>                         |
| Total assets  | \$4,363,993                | \$4,331,643                   |
|   | <hr/>                      | <hr/>                         |
| <b>Liabilities and Stockholders' Equity</b>   |                            |                               |
| Current liabilities:  |                            |                               |
| Accounts payable  | \$ 992,799                 | \$1,060,968                   |
| Accrued expenses and other current liabilities  | 561,779                    | 612,999                       |
| Income taxes payable  | 115,484                    | 109,026                       |
| Current maturities of long-term debt  | 324,795                    | 318,521                       |
|   | <hr/>                      | <hr/>                         |
| Total current liabilities   | 1,994,857                  | 2,101,514                     |
| Deferred income taxes and other credits   | 68,686                     | 64,139                        |
| Long-term debt, net of current maturities   | 313,469                    | 315,331                       |
| Zero coupon, convertible subordinated notes   | 2,243                      | 2,221                         |
| Commitments and contingencies:  |                            |                               |
| Stockholders' equity:   |                            |                               |
| Common stock — authorized 800,000,000 shares of \$.01 par value; issued 389,410,454 in 2002 and 385,538,340 in 2001 | 3,894                      | 3,855                         |
| Additional paid-in capital  | 1,057,501                  | 1,007,088                     |
| Unamortized value of long-term incentive stock grants   | (2,532)                    | (2,578)                       |
| Accumulated other comprehensive loss  | (76,033)                   | (71,273)                      |
| Retained earnings   | 1,820,443                  | 1,717,734                     |
| Treasury stock, at cost – 83,121,610 shares in 2002 and 82,443,170 in 2001  | (818,535)                  | (806,388)                     |
|   | <hr/>                      | <hr/>                         |
| Total stockholders' equity  | 1,984,738                  | 1,848,438                     |
|   | <hr/>                      | <hr/>                         |
| Total liabilities and stockholders' equity  | \$4,363,993                | \$4,331,643                   |
|   | <hr/>                      | <hr/>                         |

*The accompanying notes are an integral part of these statements.*

**OFFICE DEPOT, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS**  
(In thousands, except per share amounts)  
(Unaudited)

|  | 13 Weeks Ended<br>March 30, 2002 | 13 Weeks Ended<br>March 31, 2001 |
|--|----------------------------------|----------------------------------|
| Sales  | \$3,040,615                      | \$3,017,914                      |
| Cost of goods sold and occupancy costs             | 2,157,424                        | 2,211,063                        |
| Gross profit                                       | 883,191                          | 806,851                          |
| Store and warehouse operating and selling expenses | 602,056                          | 610,303                          |
| General and administrative expenses                | 116,111                          | 98,061                           |
| Other operating expenses                           | 1,116                            | 1,569                            |
| Operating profit                                   | 163,908                          | 96,918                           |
| Other income (expense):                            |                                  |                                  |
| Interest income                                    | 2,896                            | 1,607                            |
| Interest expense                                   | (11,267)                         | (10,281)                         |
| Miscellaneous income, net                          | 2,477                            | 1,163                            |
| Earnings before income taxes                       | 158,014                          | 89,407                           |
| Income taxes                                       | 55,305                           | 33,078                           |
| Net earnings                                       | \$ 102,709                       | \$ 56,329                        |
| Earnings per common share:                         |                                  |                                  |
| Basic  | \$ 0.34                          | \$ 0.19                          |
| Diluted  | 0.32                             | 0.19                             |

*The accompanying notes are an integral part of these statements.*

**OFFICE DEPOT, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

|   | 13 Weeks Ended<br>March 30, 2002 | 13 Weeks Ended<br>March 31, 2001 |
|---|----------------------------------|----------------------------------|
| <b>Cash flows from operating activities:</b>  |                                  |                                  |
| Net earnings  | \$ 102,709                       | \$ 56,329                        |
| Adjustments to reconcile net earnings to net cash provided by operating activities:           |                                  |                                  |
| Depreciation and amortization   | 49,127                           | 48,280                           |
| Provision for losses on inventories and receivables   | 27,867                           | 35,565                           |
| Changes in working capital  | 112,670                          | 206,240                          |
| Other operating activities, net   | 4,051                            | 16,580                           |
| Net cash provided by operating activities   | <u>296,424</u>                   | <u>362,994</u>                   |
| <b>Cash flows from investing activities:</b>  |                                  |                                  |
| Capital expenditures, net of proceeds from sales  | (35,818)                         | (27,495)                         |
| Net cash used in investing activities   | <u>(35,818)</u>                  | <u>(27,495)</u>                  |
| <b>Cash flows from financing activities:</b>  |                                  |                                  |
| Proceeds from exercise of stock options and sale of stock under employee stock purchase plans | 42,987                           | 3,400                            |
| Acquisition of treasury stock   | (12,166)                         | —                                |
| Payments on long- and short-term borrowings   | (5,029)                          | (336,146)                        |
| Net cash provided by (used in) financing activities   | <u>25,792</u>                    | <u>(332,746)</u>                 |
| <b>Effect of exchange rate changes on cash and cash equivalents</b>                           | <u>(5,180)</u>                   | <u>(19,849)</u>                  |
| Net increase (decrease) in cash and cash equivalents  | 281,218                          | (17,096)                         |
| Cash and cash equivalents at beginning of period  | 563,410                          | 151,482                          |
| Cash and cash equivalents at end of period  | <u>\$844,628</u>                 | <u>\$ 134,386</u>                |
| <b>Supplemental disclosure of other cash flow activities:</b>                                 |                                  |                                  |
| Interest received   | \$ 2,781                         | \$ 163                           |
| Interest paid   | (19,435)                         | (8,878)                          |
| Income taxes paid   | (44,062)                         | (1,838)                          |
| <b>Supplemental disclosure of non-cash investing and financing activities:</b>                |                                  |                                  |
| Additional paid-in capital related to income tax benefits on stock options exercised          | 5,815                            | —                                |
| Assets acquired under capital leases  | 7,722                            | —                                |

*The accompanying notes are an integral part of these statements.*

**OFFICE DEPOT, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

(Tabular amounts in thousands)

**Note A – Basis of Presentation**

Office Depot, Inc., (the “Company”) is the world’s largest seller of office products and services. Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. The balance sheet at December 29, 2001 has been derived from audited financial statements at that date. The condensed interim financial statements as of March 30, 2002 and for the 13-week period ending March 30, 2002 (also referred to as “the first quarter of 2002”) and March 31, 2001 (also referred to as “the first quarter of 2001”) are unaudited. However, in our opinion, these financial statements reflect all adjustments (consisting only of normal, recurring items) necessary to provide a fair presentation of the Company’s financial position, results of operations and cash flows for the periods presented. Certain prior year amounts have been reclassified to conform to current year presentation.

These interim results are not necessarily indicative of the results that should be expected for the full year. For a better understanding of the Company and its financial statements, it is recommended that these condensed interim financial statements be read in conjunction with the Company’s audited financial statements for the year ended December 29, 2001, which are included in our 2001 Annual Report on Form 10-K, filed on March 19, 2002.

**Note B – Goodwill and Other Intangible Assets**

Financial Accounting Standards Board Statement No. 142, *Goodwill and Other Intangibles*, was effective for Office Depot at the beginning of fiscal year 2002. As provided under this Statement, the initial testing of goodwill for possible impairment will be completed within the first six months of 2002 and final testing, if possible impairment has been identified, by the end of the year. The initial classification of \$244.3 million of goodwill and \$9.9 million of other intangible asset amounts allocated to segments are listed below:

|                                     | Original<br>Value | Beginning of<br>Fiscal Year 2002 |
|-------------------------------------|-------------------|----------------------------------|
| North American Retail               |                   |                                  |
| Goodwill                            | \$ 1,889          | \$ 1,423                         |
| Business Services Group             |                   |                                  |
| Goodwill                            | 267,774           | 214,320                          |
| Marketing-related intangible assets | 10,450            | 8,229                            |
| International                       |                   |                                  |
| Goodwill                            | 40,538            | 28,516                           |
| Marketing-related intangible assets | 2,104             | 1,679                            |

Based on a tax election made in April 2002, goodwill relating to a 2001 acquisition now will be deductible for tax purposes. Goodwill allocated to the Business Services Group will increase by approximately \$16.2 million, and deferred tax assets will be reduced by a like amount during the second quarter of 2002. The change will not affect the results of operations for the period.

Amortization of intangible assets totaled \$0.1 million for the first quarter of 2002, and amortization of goodwill and intangible assets totaled \$1.8 million for the first quarter of 2001. Without this amortization, pro forma net earnings would have increased approximately \$1.1 million for the first quarter of 2001. Reported earnings per share would not have been affected. It is anticipated that amortization of intangible assets will continue at approximately \$0.5 million per year for each of the next five years

#### Note C – Comprehensive Income

Comprehensive income represents all non-owner changes in stockholders' equity and consists of the following:

|  | First Quarter    |                  |
|--|------------------|------------------|
|  | 2002             | 2001             |
| Net earnings                             | \$102,709        | \$ 56,329        |
| Foreign currency translation adjustments | (4,760)          | (22,345)         |
| <b>Total comprehensive income</b>        | <b>\$ 97,949</b> | <b>\$ 33,984</b> |

#### Note D – Stock Repurchase

In 2001, the Board of Directors approved stock repurchases of up to \$50 million per year, until cancelled by the Board. During the first quarter of 2002, the Company repurchased 679,928 shares at a total cost of \$12.2 million plus commissions.

#### Note E – Long-Term Debt

The Company's existing 364-day credit agreement provides up to \$255.0 million of working capital availability through May 2002. The Company also has a domestic credit facility that provides working capital and letters of credit capacity totaling \$300.0 million through February 2003. As of March 30, 2002 we had no outstanding borrowings under these agreements. Outstanding letters of credit at March 30, 2002 totaled \$39.1 million.

Subsequent to the quarter end, the Company replaced the 364-day credit agreement, the domestic credit facility and the existing Yen facilities with a single \$600 million credit agreement. Refer to Note I — Subsequent Events for further discussion.

**Note F – Earnings Per Share (“EPS”)**

The information required to compute basic and diluted EPS is as follows:

|  | First Quarter |           |
|--|---------------|-----------|
|  | 2002          | 2001      |
| <b>Basic:</b>  |               |           |
| Weighted average number of common shares outstanding               | 303,504       | 296,095   |
| <b>Diluted:</b>  |               |           |
| Net earnings   | \$102,709     | \$ 56,329 |
| Interest expense related to convertible notes, net of income taxes | 1,902         | 1,755     |
| Adjusted net earnings  | \$104,611     | \$ 58,084 |
| Weighted average number of common shares outstanding               | 303,504       | 296,095   |
| Shares issued upon assumed conversion of convertible notes         | 13,845        | 13,845    |
| Shares issued upon assumed exercise of dilutive stock options      | 8,878         | 2,599     |
| Shares used in computing diluted EPS                               | 326,227       | 312,539   |

Options to purchase 8.5 million shares of common stock were not included in the computation of diluted earnings per share for the first quarter of 2002, because their weighted average effect would have been anti-dilutive.

**Note G – Segment Information**

The following is a summary of the Company’s significant accounts and balances by segment for the first quarters of 2002 and 2001, reconciled to the consolidated totals.

|                                | Sales       |             | Earnings Before<br>Income Taxes |           |
|--------------------------------|-------------|-------------|---------------------------------|-----------|
|                                | 2002        | 2001        | 2002                            | 2001      |
| North American Retail Division | \$1,621,851 | \$1,611,162 | \$ 122,962                      | \$ 75,065 |
| Business Services Group        | 992,681     | 980,979     | 97,790                          | 55,888    |
| International Division         | 426,764     | 426,624     | 62,199                          | 65,667    |
| Total reportable segments      | 3,041,296   | 3,018,765   | 282,951                         | 196,620   |
| Eliminations and other         | (681)       | (851)       | (124,937)                       | (107,213) |
| Total                          | \$3,040,615 | \$3,017,914 | \$ 158,014                      | \$ 89,407 |

A reconciliation of earnings before income taxes from reportable segments to earnings before income taxes in the condensed consolidated financial statements is as follows:

|                                     | 2002              | 2001             |
|-------------------------------------|-------------------|------------------|
| Total from reportable segments      | \$ 282,951        | \$ 196,620       |
| General and administrative expenses | (116,111)         | (98,061)         |
| Interest income                     | 2,896             | 1,607            |
| Interest expense                    | (11,258)          | (10,269)         |
| Other operating expenses            | (464)             | (490)            |
| Earnings before income taxes        | <u>\$ 158,014</u> | <u>\$ 89,407</u> |

|                                | Assets             |                      |
|--------------------------------|--------------------|----------------------|
|                                | March 30,<br>2002  | December 29,<br>2001 |
| North American Retail Division | \$1,577,502        | \$1,803,042          |
| Business Services Group        | 1,045,004          | 1,198,355            |
| International Division         | 878,296            | 864,201              |
| Total reportable segments      | <u>3,500,802</u>   | <u>3,865,598</u>     |
| Other                          | 863,191            | 466,045              |
| Total                          | <u>\$4,363,993</u> | <u>\$4,331,643</u>   |

#### Note H – New Accounting Standards

Financial Accounting Standards Board (“FASB”) Statement No. 142, *Goodwill and Other Intangible Assets*, was effective for Office Depot at the beginning of fiscal year 2002. Under this Statement, goodwill and intangible assets with indeterminate lives are no longer amortized, but are tested annually for possible impairment. Intangible assets with useful lives that are subject to estimation continue to be amortized over that period. Amortization of identifiable assets for the first quarter of 2002 was \$0.1 million while amortization of goodwill and intangible assets for the first quarter of 2001 was \$1.8 million. Under this Statement, initial testing of goodwill for possible impairment must be conducted within six months of adoption and completed by the end of 2002. We have not yet completed the testing of goodwill and, accordingly, cannot estimate the full impact of this Statement on the Company’s results of operations.

In July 2001, the FASB issued Statement No. 143, *Accounting for Asset Retirement Obligations*. This Statement requires capitalizing any retirement costs as part of the total cost of the related long-lived asset and subsequently allocating the total expense to future periods using a systematic and rational method. Adoption of this Statement is required for Office Depot with the beginning of fiscal year 2003. We have not yet completed our evaluation of the impact of adopting this Statement.

## **Note I – Subsequent Events**

On April 24, 2002 the Company replaced its 364-day credit agreement, domestic credit facility, and its yen facilities with a single credit facility through a syndicate of banks, financial institutions and other lenders. This new revolving credit facility (the “New Credit Facility”) provides for borrowings in the aggregate amount of \$600 million, including up to \$150 million for standby and trade letter of credit issuance. The New Credit Facility is a 3-year unsecured revolving credit facility maturing on April 24, 2005. The New Credit Facility has the availability for U.S. Dollar borrowings up to the full amount of the facility, and for Yen borrowings up to an equivalent of \$100 million U.S. Dollars. Borrowings will bear interest at a benchmark variable rate plus a spread determined at the time of usage. For U.S. Dollar borrowings, interest will be based on the then-current London Interbank Offering Rate (LIBOR). For international borrowings, interest will be based on the then-current Eurocurrency rate. The benchmark rates can be specified by the Company for periods of one, two, three or six months. Based on the Company’s current credit ratings, all borrowings would include a spread of 0.925%.

The covenants contained in the New Credit Facility are similar to those in the credit facilities existing as of March 30, 2002.

## **Item 2**

### **MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

#### **GENERAL**

Office Depot, Inc., which includes our subsidiaries, is the largest seller of office products and services in the world. We sell to consumers and businesses of all sizes through our three business segments: North American Retail Division, Business Services Group (“BSG”) and International Division.

Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) is intended to provide information to assist you in better understanding and evaluating our financial condition and results of operations. We recommend that you read this MD&A in conjunction with our condensed consolidated financial statements in Item 1 of this Quarterly Report on Form 10-Q, as well as our 2001 Annual Report on Form 10-K. This MD&A contains significant amounts of forward-looking information. Without limitation, when we use the words “believe,” “estimate,” “plan,” “expect,” “intend,” “anticipate,” “continue,” “project,” “probably,” “should” and similar expressions in this Quarterly Report on Form 10-Q, we are identifying forward-looking statements. Our Cautionary Statements, which you will find immediately following this MD&A and following the MD&A in our 2001 Annual Report on Form 10-K, apply to these forward-looking statements.

#### **RESULTS OF OPERATIONS**

While total sales increased slightly for the first quarter of 2002 compared to the same period in 2001, certain profitability measures improved significantly. Operating profit increased 69% to \$163.9 million and diluted earnings per share increased 68% to \$0.32. The improvements reflect a strong gross margin contribution from the North American businesses, partially offset by expansion-related costs from international operations. The increased profitability comes amid continued softness in portions of the U.S. and international economies.

Overall

|  | First Quarter 2002 |                     | First Quarter 2001 |                     |
|--|--------------------|---------------------|--------------------|---------------------|
|  | \$ in Millions     | Percentage of Sales | \$ in Millions     | Percentage of Sales |
| Sales  | \$3,040.6          | 100.0%              | \$3,017.9          | 100.0%              |
| Cost of goods sold and occupancy costs             | 2,157.4            | 71.0%               | 2,211.1            | 73.3%               |
| Gross profit                                       | 883.2              | 29.0%               | 806.8              | 26.7%               |
| Store and warehouse operating and selling expenses | 602.1              | 19.8%               | 610.3              | 20.2%               |
| Store and warehouse operating profit               | \$ 281.1           | 9.2%                | \$ 196.5           | 6.5%                |

Overall sales increased 1% to \$3.0 billion in the first quarter of 2002 compared to the same period of 2001. Comparable sales in our stores and delivery centers worldwide that have been open for more than one year decreased one percent for the quarter. Worldwide e-commerce sales grew 36% to \$488.3 million during the first quarter of 2002, as compared to \$359.4 million in the same period of 2001. These sales are comprised of all worldwide e-commerce transactions, including those from our domestic public Web sites, (www.officedepot.com and www.vikingop.com), our three contract business-to-business sites, as well as our 11 international Web sites. For business segment reporting purposes, these sales are reported in the appropriate business segment.

Gross profit as a percentage of sales increased to 29.0% in the first quarter of 2002 from 26.7% in 2001. The increase reflects a North American Retail inventory rationalization program that depressed gross profit in 2001, the continued shift away from lower-margin technology products and more disciplined contract pricing in the Business Services Group.

Store and warehouse operating and selling expenses decreased, primarily from efficiencies and cost control in warehouse and call center operations.

North American Retail Division

|  | First Quarter 2002 |                     | First Quarter 2001 |                     |
|--|--------------------|---------------------|--------------------|---------------------|
|  | \$ in Millions     | Percentage of Sales | \$ in Millions     | Percentage of Sales |
| Sales  | \$1,621.9          | 100.0%              | \$1,611.2          | 100.0%              |
| Cost of goods sold and occupancy costs             | 1,228.5            | 75.7%               | 1,270.6            | 78.9%               |
| Gross profit                                       | 393.4              | 24.3%               | 340.6              | 21.1%               |
| Store and warehouse operating and selling expenses | 269.8              | 16.7%               | 264.4              | 16.4%               |
| Segment operating profit                           | \$ 123.6           | 7.6%                | \$ 76.2            | 4.7%                |

North American Retail Division sales increased less than one percent to \$1.6 billion in the first quarter of 2002, compared to the same period of 2001. Comparable sales in the 820 stores that have been open for more than one year decreased almost 2% in the first quarter of 2002. Comparable sales of computer hardware declined by 13% and office furniture declined 4%; however, comparable sales of office and machine supplies increased for the quarter.

Gross profit as a percent of sales increased to 24.3% for the first three months of 2002, reflecting the continued shift in product mix away from lower-margin technology products and the impact in 2001 of our SKU rationalization program. During the business review that was conducted in the latter half of 2000, we decided to reduce the inventory assortment in our North American Retail stores to focus on the items that our core business customers need most often. This program was substantially completed in the first quarter of 2001, and promotional pricing was used to complete the process.

Store operating and selling expenses increased from somewhat higher payroll-related expenses, facilities costs and advertising, partially offset by lower credit handling fees.

*Business Services Group*

|  | First Quarter 2002 |                     | First Quarter 2001 |                     |
|--|--------------------|---------------------|--------------------|---------------------|
|  | \$ in Millions     | Percentage of Sales | \$ in Millions     | Percentage of Sales |
| Sales  | \$992.7            | 100.0%              | \$981.0            | 100.0%              |
| Cost of goods sold and occupancy costs             | 674.6              | 68.0%               | 684.1              | 69.7%               |
| Gross profit                                       | 318.1              | 32.0%               | 296.9              | 30.3%               |
| Store and warehouse operating and selling expenses | 220.3              | 22.1%               | 239.7              | 24.5%               |
| Segment operating profit                           | \$ 97.8            | 9.9%                | \$ 57.2            | 5.8%                |

BSG sales increased 1% in the first quarter of 2002 compared to the first quarter of 2001; however, comparable sales decreased almost 3% for the period. Sales were soft across all customer classes reflecting continued softness in the domestic economy. While some regions showed gains, the Central and Western regions continued to show sales declines. Sales of furniture and technology products declined, while sales of machine supplies increased.

Gross profit as a percentage of sales increased to 32.0% for the first quarter of 2002, primarily from more disciplined contract pricing on volume-based purchases.

Store and warehouse operating and selling expenses as a percentage of sales decreased to 22.1% for the first quarter of 2002. Operational efficiencies in our warehouses and call centers initiated last year allowed us to lower costs while improving customer service. Payroll, delivery and advertising expenses declined for the first quarter of 2002 compared to the same period of 2001.

International Division

|  | First Quarter 2002 |                     | First Quarter 2001 |                     |
|--|--------------------|---------------------|--------------------|---------------------|
|  | \$ in Millions     | Percentage of Sales | \$ in Millions     | Percentage of Sales |
| Sales  | \$426.8            | 100.0%              | \$426.6            | 100.0%              |
| Cost of goods sold and occupancy costs             | 254.7              | 59.7%               | 256.7              | 60.2%               |
| Gross profit                                       | 172.1              | 40.3%               | 169.9              | 39.8%               |
| Store and warehouse operating and selling expenses | 112.2              | 26.3%               | 106.6              | 25.0%               |
| Segment operating profit                           | \$ 59.9            | 14.0%               | \$ 63.3            | 14.8%               |

Sales in our International Division were flat for the first quarter of 2002 as compared to the respective period of 2001. The strong U.S. dollar resulted in foreign currency translations that adversely affected sales during the quarter by approximately \$19.5 million. Excluding the foreign currency effect, sales in our International Division increased 4.6% over the first quarter of 2001, primarily resulting from new operations in Europe along with increased e-commerce sales. Although we continued to experience weak sales in Japan, operating losses in that country were reduced. We anticipate some sales softness in our European catalog operations for the next few quarters, attributable to the impact of a soft global economy.

Gross profit as a percentage of sales increased for the first quarter of 2002, primarily as a result of a shift in product mix in our catalog operations.

Store and warehouse operating and selling expenses as a percentage of sales increased to 26.3% for the first quarter of 2002. The continued expansion of our contract business into European countries resulted in an increase in payroll and facilities costs for the period. Future results of operations will be adversely affected by expansion activity until sales growth is able to overcome the build-up in initial infrastructure costs.

Unfavorable exchange rates negatively impacted International operating profit by approximately \$2.2 million for the quarter.

## Corporate and Other

Income and expenses not allocated to the store and warehouse operating profit of our segments consist of pre-opening expenses, general and administrative expenses, our share of joint venture earnings, interest income and expense, income taxes and inter-segment transactions.

*General and Administrative Expenses:* As a percentage of sales, general and administrative expenses increased in the first quarter of 2002 to 3.8% of sales from 3.2% of sales in the first quarter of 2001. This increase primarily results from additional payroll-related expenses from functions supporting domestic and international expansion.

*Interest Income and Expense:* Interest income increased in the first quarter of 2002 by approximately \$1.3 million over the first quarter of 2001 because of a higher average cash balance. The increase in interest expense resulted from an increase in long-term debt over the corresponding quarter in 2001. The higher long-term debt balance was attributable to the issuance of \$250 million in senior subordinated notes during July 2001.

*Miscellaneous Income:* Miscellaneous income, net increased \$1.3 million in the first quarter of 2002 from the first quarter of 2001, reflecting the impact of new accounting rules that stopped the amortization of goodwill as of the beginning of fiscal year 2002.

*Income taxes:* The effective income tax rate declined to 35% for the first quarter of 2002, compared to 37% for the first quarter of 2001, primarily because of the increased proportion of International income which is taxed at lower effective tax rates.

## LIQUIDITY AND CAPITAL RESOURCES

Our operating cash flows for the first three months of 2002 were \$66.6 million lower than the same period in 2001. Lower cash flow from changes in working capital of \$93.6 million more than offset the increase in net income for the quarter. Total inventory levels decreased \$233.7 million, reflecting our on-going initiatives to trim inventories and improve turnover, as well as the seasonal reduction that generally occurs in the first quarter. Total inventory decreased \$306.4 million in the first quarter of 2001, as a result of the SKU reduction program, increased inventory turnover and seasonal influences.

Capital expenditures in the first quarter of 2002 were \$8.3 million higher than in the first quarter of 2001. The increase related to the purchase of new financial and human resources software, as well as the expansion of our contract business into European countries.

Cash flows from financing activities provided \$25.8 million in the first quarter of 2002, primarily from benefit plan transactions. During the first quarter of 2002, we repurchased \$12.2 million of our stock under a stock repurchase program authorized by our Board of Directors that allows us to repurchase up to \$50 million annually, until cancelled by the Board. The use of cash in 2001 primarily resulted from payments of \$336.1 million on our short- and long-term domestic bank borrowings. (See Note D of the Notes to the Condensed Consolidated Financial Statements for more information regarding our stock repurchase program, and Note E for information on our bank borrowings.)

Subsequent to the quarter-end, we entered into an agreement to replace our existing 364-day credit agreement, the domestic credit facility and the Yen facilities. This new agreement provides for borrowings in the aggregate amount of \$600 million, including up to \$150 million for standby and trade letter of credit issuance. (Refer to Note I of the Notes to the Condensed Consolidated Financial Statements for further discussion.)

At March 30, 2002, approximately \$236 million of zero coupon, convertible subordinated notes were classified as current maturities of long-term debt. The holders of these securities have the one-day option to require the Company to repurchase these notes on December 11, 2002 at \$781.19 per note, representing the original issue price plus accrued interest. If these securities are put to the Company on that date, we may choose to pay the holders in cash, common stock or a combination of the two. The holders may also convert these notes at any time into common stock at a rate of 43.895 shares per note. The likelihood of holders exercising their put option on December 11, 2002 will be influenced by the potential value of converting into common stock at the stated conversion ratio. If the note holders do not exercise their put option, the securities will be reclassified as long-term obligations during the fourth quarter of 2002.

## **NEW ACCOUNTING STANDARDS**

Financial Accounting Standards Board (FASB) Statement No. 142, *Goodwill and Other Intangible Assets*, was effective for Office Depot at the beginning of fiscal year 2002. Under this Statement, goodwill and intangible assets with indeterminate lives are no longer amortized, but are tested annually for possible impairment. Intangible assets with useful lives that are subject to estimation continue to be amortized over that period. Amortization of identifiable assets for the first quarter of 2002 was \$0.1 million while amortization of goodwill and intangible assets for the first quarter of 2001 was \$1.8 million. Under this Statement, initial testing of goodwill for possible impairment must be conducted within six months of adoption and completed by the end of 2002. We have not yet completed the testing of goodwill and, accordingly, cannot estimate the full impact of this Statement on the Company's results of operations.

In July 2002, the FASB issued Statement No. 143, *Accounting for Asset Retirement Obligations*. This Statement requires capitalizing any retirement costs as part of the total cost of the related long-lived asset and subsequently allocating the total expense to future periods using a systematic and rational method. Adoption of this Statement is required for Office Depot with the beginning of fiscal year 2003. We have not yet completed our evaluation of the impact of adopting this Statement.

## **CRITICAL ACCOUNTING POLICIES**

Our condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. As such, some accounting policies have a significant impact on amounts reported in these financial statements. A summary of those significant accounting policies can be found in our 2001 Annual Report on Form 10-K, filed on March 19, 2002 in the Notes to the Consolidated Financial Statements, **Note A**. In particular, judgment is used in areas such as income recognition for cooperative advertising and vendor programs, determining the allowance for uncollectible accounts, the provision for sales returns and allowances, self-insurance accruals, adjustments to inventory valuations, and provisions for store closures and asset impairments.

## **CAUTIONARY STATEMENTS for Purposes of the "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995**

In December 1995, the Private Securities Litigation Reform Act of 1995 (the "Act") was enacted by the United States Congress. The Act, as amended, contains certain amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934. These amendments provide protection from liability in private lawsuits for "forward-looking" statements made by public companies. We want to take advantage of the "safe harbor" provisions of the Act. In doing so, we have disclosed these forward-looking statements by informing you in specific cautionary statements of the circumstances which may cause the information in these statements not to transpire as expected.

This Quarterly Report on Form 10-Q contains both historical information and other information that you may use to infer future performance. Examples of historical information include our quarterly financial statements and the commentary on past performance contained in our MD&A. While we have specifically identified certain information as being forward-looking in the context of its presentation, we caution you that, with the exception of information that is clearly historical, all the information contained in this Quarterly Report on Form 10-Q should be considered to be "forward-looking statements" as referred to in the Act. Without limiting the generality of the preceding sentence, any time we use the words "estimate," "project," "intend," "expect," "believe," "anticipate," "continue," and similar expressions, we intend to clearly express that the information deals with possible future events and is forward-looking in nature.

Forward-looking information involves risks and uncertainties, including certain matters that we discuss in more detail below and in our 2001 Annual Report on Form 10-K filed with the Securities

and Exchange Commission. This information is based on various factors and important assumptions about future events that may or may not actually come true. As a result, our operations and financial results in the future could differ materially and substantially from those we have discussed in the forward-looking statements in this Quarterly Report. In particular, the factors we discuss below and in our 2001 Annual Report on Form 10-K could affect our actual results and could cause our actual results during the remainder of 2002 and in future years to differ materially from those expressed in any forward-looking statement made by us in this Quarterly Report on Form 10-Q. Those Cautionary Statements contained in our 2001 Annual Report on Form 10-K are incorporated herein by this reference to them; and, in addition, we urge you to also consider the following cautionary statements:

**Competition:** We compete with a variety of retailers, dealers and distributors in a highly competitive marketplace that includes high-volume office supply chains, warehouse clubs, computer stores, contract stationers and well-established mass merchant retailers. Even grocery and drug store chains have begun to carry at least limited supplies of basic office supplies and technology items. Well-established mass merchant retailers have the financial and distribution ability to compete very effectively with us should they choose to enter the office superstore retail category, Internet office supply or contract stationer business or substantially expand their offering in their existing retail outlets. This could have a material adverse effect on our business and results of our operations.

**International Activity:** We have operations in a number of international markets. We intend to enter additional international markets as attractive opportunities arise. Each entry could take the form of a start-up, acquisition of stock or assets or a joint venture or licensing arrangement. In addition to the risks described above (in our domestic operations), internationally we face such risks as foreign currency fluctuations, unstable political and economic conditions, and, because some of our foreign operations are not wholly-owned, compromised operating control in certain countries. Recent world events have served to underscore even further the risks and uncertainties of operating in other parts of the world. Risks of civil unrest, war and economic crisis in portions of the world outside North America in which we operate represent a more significant factor than may have been the case in the past. Also, we have experienced significant fluctuations in foreign currency exchange rates, which have resulted in lower than anticipated sales and earnings in our International Division. Our results may continue to be adversely affected by these fluctuations in the future. In addition, we do not have a large group of managers experienced in international operations and will need to recruit additional management resources to successfully compete in many foreign markets. All of these risks could have a material adverse effect on our financial position or our results from operations. Moreover, as we increase the relative percentage of our business that is operated globally, we also increase the impact these factors have on our future operating results. Our start-up operation in Japan, in particular, has proven to be unprofitable to date and, in fact, has generated losses that have materially affected our financial results in the past and are expected to do so for some time in the future. Because of differing commercial practices, laws and other factors, our ability to use the Internet and e-commerce to substantially increase sales in international locations may not progress at the same rate as in North America.

**Economic Downturn:** In the past decade, the favorable United States economy has contributed to the expansion and growth of retailers. Our country has experienced low inflation, low interest rates, low unemployment and an escalation of new businesses. The economy has recently begun to show signs of a downturn. The Federal Reserve dramatically reduced interest rates throughout 2001 in recognition of the economic downturn. The overall stock market has been in a period of poor performance throughout 2001. The retail industry, in particular, continues to display signs of a slowdown, with several specialty retailers, both in and outside our industry segment, failing to meet earnings expectations throughout 2001. One major discount retailer filed for bankruptcy protection earlier in 2002, further indicating that the slow economy is having an impact on the retail industry. This general economic slowdown may adversely impact our business and the results of our operations.

**Item 3****QUANTITATIVE AND QUALITATIVE DISCLOSURES  
ABOUT MARKET RISK****Interest Rate Risks**

See the disclosure in our 2001 Annual Report on Form 10-K. We do not believe that the risk we face related to interest rate changes is materially different than it was at the date of the Annual Report.

**Foreign Exchange Rate Risks**

See the disclosure in our 2001 Annual Report on Form 10-K. We do not believe that the risk we face related to foreign currencies is materially different than it was at the date of the Annual Report.

**PART II. OTHER INFORMATION****Item 1 Legal Proceedings**

We are involved in litigation arising in the normal course of our business. While from time to time claims are asserted that make demands for large sums of money (including from time to time, actions which are asserted to be maintainable as class action suits), we do not believe that any of these matters, either individually or in the aggregate, will materially affect our financial position or the results of our operations.

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

We held an annual meeting of our stockholders on April 25, 2002 to vote on the following:

- a) To elect 12 directors to hold office until the next Annual Meeting of our stockholders or until their successors have been elected and qualified. Our stockholders voted to elect all 12 directors. Votes for and votes withheld, by nominee, were as follows:

| Nominee               | For         | Withheld  |
|-----------------------|-------------|-----------|
| Lee A. Ault, III      | 271,479,149 | 3,551,450 |
| Neil R. Austrian      | 273,012,611 | 2,017,988 |
| Cynthia R. Cohen      | 273,022,372 | 2,008,227 |
| David I. Fuente       | 272,969,829 | 2,060,770 |
| Brenda J. Gaines      | 269,258,707 | 5,771,892 |
| Bruce S. Gordon       | 270,796,825 | 4,233,774 |
| W. Scott Hedrick      | 273,037,445 | 1,993,154 |
| James L. Heskett      | 271,484,213 | 3,546,386 |
| Michael J. Myers      | 269,984,205 | 5,046,394 |
| Bruce Nelson          | 273,041,043 | 1,989,556 |
| Frank P. Scruggs, Jr. | 270,177,619 | 4,852,980 |
| Peter J. Solomon      | 273,034,818 | 1,995,781 |

- b) To ratify our Board's appointment of Deloitte & Touche LLP as our independent public accountants for the 2002 fiscal year. Our stockholders approved this matter with 265,921,999 votes for and 8,158,341 votes against. There were 950,259 abstentions.
- c) To consider the Company's proposal to amend the Company's Long Term Equity Incentive Plan. Our stockholders voted for this matter with 259,210,854 votes for and 14,646,225 votes against. There were 1,173,520 abstentions.
- d) To consider the establishment of an Executive Bonus Plan by which the Compensation Committee of our Board of Directors will establish bonus targets for the Company's executive management employees. Our stockholders voted for this matter with 266,983,522 votes for and 6,890,634 votes against. There were 1,156,443 abstentions.

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

- a) 10.1 Revolving Credit Agreement dated as of April 24, 2002 by and among Office Depot, Inc. and Citibank, N.A. as syndication agent; Fleet National Bank and BNP Paribas as documentation agents; Salomon Smith Barney Inc. and First Union Securities, Inc. as joint lend arrangers; Salomon Smith Barney Inc. as sole bookrunner; and Wachovia Bank, National Association as administrative agent for the lenders. (Exhibits to the Revolving Credit Agreement have been omitted, but a copy may be obtained free of charge upon request to the Company.)
- b)
  - 1. A Current Report on Form 8-K was filed on February 13 regarding a press release issued with earnings information for fiscal year ended December 29, 2001 and an updated outlook for the first quarter of 2002.
  - 2. A Current Report on Form 8-K was filed on February 14 announcing the intention of the Company's Chairman and CEO to exercise certain stock options and to sell shares in the Company for diversification and estate planning purposes.
  - 3. A Current Report on Form 8-K was filed on February 26 regarding an analysts meeting held on that day.
  - 4. A Current Report on Form 8-K was filed on February 27 regarding an analysts meeting held on that day.
  - 5. A Current Report on Form 8-K was filed on March 13 regarding an analysts meeting held on that day.
  - 6. A Current Report on Form 8-K was filed on April 17 regarding a press release issued with earnings information for the quarter ended March 30, 2002.

## 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.

OFFICE DEPOT, INC.  
(Registrant)

Date: April 30, 2002

By: /s/ M. Bruce Nelson  
M. Bruce Nelson  
Chief Executive Officer

Date: April 30, 2002

By: /s/ Charles E. Brown  
Charles E. Brown  
Executive Vice President, Finance  
and Chief Financial Officer  
(Principal Financial Officer)

Date: April 30, 2002

By: /s/ James A. Walker  
James A. Walker  
Senior Vice President, Finance  
and Controller  
(Principal Accounting Officer)

## CREDIT AGREEMENT

Dated as of April 24, 2002

OFFICE DEPOT, INC., a Delaware corporation (the "BORROWER"), the banks, financial institutions and other institutional lenders (the "INITIAL LENDERS") listed on the signature pages hereof, CITIBANK, N.A., as syndication agent, FLEET NATIONAL BANK and BNP PARIBAS, as documentation agents, SALOMON SMITH BARNEY INC. and FIRST UNION SECURITIES, INC., as joint lead arrangers, SALOMON SMITH BARNEY INC., as sole bookrunner, and WACHOVIA BANK, NATIONAL ASSOCIATION ("WACHOVIA"), as administrative agent (the "AGENT") for the Lenders (as hereinafter defined), agree as follows:

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ADVANCE" means a Revolving Credit Advance or a Competitive Bid Advance.

"AFFILIATE" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"AGENT'S ACCOUNT" means (a) in the case of Advances denominated in Dollars, the account of the Agent maintained by the Agent at Wachovia at its office at 201 South College Street, Charlotte, North Carolina 28288, Account No. 5000000033865, Attention: Syndication Agency Services, (b) in the case of Advances denominated in any Committed Currency, the account of the Sub-Agent designated in writing from time to time by the Agent to the Borrower and the Lenders for such purpose and (c) in any such case, such other account of the Agent as is designated in writing from time to time by the Agent to the Borrower and the Lenders for such purpose.

"AGENT'S CORRESPONDENT" means Wachovia Bank, National Association, London Branch, or any other financial institution designated by the Agent and notified to the Borrower and the Lenders to act as the Agent's correspondent hereunder with respect to the distribution and payment of Tranche B Advances.

"APPLICABLE LENDING OFFICE" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of a Base Rate Advance and such Lender's Eurocurrency Lending Office in the case of a Eurocurrency Rate Advance and, in the case of a Competitive Bid Advance, the office of such Lender notified by such Lender to the Agent as its Applicable Lending Office with respect to such Competitive Bid Advance.

"APPLICABLE MARGIN" means (a) for Base Rate Advances, 0% per annum and (b) for Eurocurrency Rate Advances, as of any date, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

| Public Debt Rating<br>S&P/Moody's<br>----- | Applicable Margin for<br>Eurocurrency Rate Advances<br>----- |
|--|--|
| LEVEL 1<br>A- or A3 or above               | 0.375%   |
| LEVEL 2<br>BBB+ or Baa1                    | 0.475%   |
| LEVEL 3<br>BBB or Baa2                     | 0.700%   |
| LEVEL 4<br>BBB- or Baa3                    | 0.925%   |
| LEVEL 5<br>Lower than Level 4              | 0.900%   |

"APPLICABLE PERCENTAGE" means, as of any date a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

| Public Debt Rating<br>S&P/Moody's<br>----- | Applicable<br>Percentage<br>----- |
|--|-----------------------------------|
| LEVEL 1<br>A- or A3 or above               | 0.125%                            |
| LEVEL 2<br>BBB+ or Baa1                    | 0.150%                            |
| LEVEL 3<br>BBB or Baa2                     | 0.175%                            |
| LEVEL 4<br>BBB- or Baa3                    | 0.200%                            |
| LEVEL 5<br>Lower than Level 4              | 0.350%                            |

"APPLICABLE UTILIZATION FEE" means, as of any date that the sum of the aggregate Advances plus the Available Amount of all Letters of Credit exceed 50% of the aggregate Tranche A Commitments, a percentage per annum determined by reference to the Public Debt Rating in effect on such date as set forth below:

| Public Debt Rating<br>S&P/Moody's<br>----- | Applicable<br>Utilization Fee<br>----- |
|--|--|
| LEVEL 1<br>A- or A3 or above               | 0.125%                                 |
| LEVEL 2<br>BBB+ or Baa1                    | 0.125%                                 |
| LEVEL 3<br>BBB or Baa2                     | 0.125%                                 |
| LEVEL 4<br>BBB- or Baa3                    | 0.250%                                 |
| LEVEL 5<br>Lower than Level 4              | 0.500%                                 |

"ASSIGNMENT AND ACCEPTANCE" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.



"AVAILABLE AMOUNT" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit (assuming compliance at such time with all conditions to drawing).

"BASE RATE" means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the highest of:

(a) the rate of interest announced publicly by Wachovia in New York, New York, from time to time, as Wachovia's base rate; and

(b) 1/2 of one percent per annum above the Federal Funds Rate.

"BASE RATE ADVANCE" means a Revolving Credit Advance denominated in Dollars that bears interest as provided in Section 2.08(a)(i).

"BORROWING" means a Revolving Credit Borrowing or a Competitive Bid Borrowing.

"BUSINESS DAY" means a day of the year on which banks are not required or authorized by law to close in New York City and, if the applicable Business Day relates to any Eurocurrency Rate Advances or LIBO Rate Advances, on which dealings are carried on in the London interbank market and banks are open for business in London and in the country of issue of the currency of such Eurocurrency Rate Advance or LIBO Rate Advance (or, in the case of an Advance denominated in Euro, on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open).

"COMMITMENT" means a Revolving Credit Commitment or a Letter of Credit Commitment.

"COMMITTED CURRENCIES" means lawful currency of the United Kingdom of Great Britain and Northern Ireland, lawful currency of Japan and Euros.

"COMPETITIVE BID ADVANCE" means an advance by a Lender to the Borrower in Dollars as part of a Competitive Bid Borrowing resulting from the competitive bidding procedure described in Section 2.03 and refers to a Fixed Rate Advance or a LIBO Rate Advance.

"COMPETITIVE BID BORROWING" means a borrowing consisting of simultaneous Competitive Bid Advances from each of the Lenders whose offer to make one or more Competitive Bid Advances as part of such borrowing has been accepted under the competitive bidding procedure described in Section 2.03.

"COMPETITIVE BID NOTE" means a promissory note of the Borrower payable to the order of any Lender, in substantially the form of Exhibit A-2 hereto, evidencing the indebtedness of the Borrower to such Lender resulting from a Competitive Bid Advance made by such Lender.

"CONFIDENTIAL INFORMATION" means information that the Borrower furnishes to the Agent, the Sub-Agent, any Lender or any of their respective agents or representatives, but does not include any such information that is or becomes generally available to the public or that is or becomes available to the Agent, the Sub-Agent, such Lender or such agent or representative from a source other than the Borrower which source, to the knowledge of any of the foregoing, is not prohibited from disclosing such information by a contractual, legal or fiduciary obligation.

"CONSOLIDATED" refers to the consolidation of accounts in accordance with GAAP.

"CONVERT", "CONVERSION" and "CONVERTED" each refers to a conversion of Tranche A Advances of one Type into Tranche A Advances of the other Type pursuant to Section 2.09 or 2.10.

"CONVERTIBLE SUBORDINATED DEBT" means the Borrower's 5% Zero-Coupon Convertible Subordinated Notes due December 11, 2007 in an aggregate principal amount of \$316,250,000 at maturity



and Borrower's 4% Zero-Coupon Convertible Subordinated Notes due November 1, 2008 in aggregate principal amount of \$2,912,000 at maturity.

"DEBT" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables not overdue by more than 90 days incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of acceptances, letters of credit or similar extensions of credit, (g) all obligations of such Person in respect of Hedge Agreements, (h) all Debt of others referred to in clauses (a) through (g) above or clause (i) below and other payment obligations guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Debt or to advance or supply funds for the payment or purchase of such Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Debt or to assure the holder of such Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (i) all Debt referred to in clauses (a) through (h) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt (it being understood that the amount of such Debt described in this clause (i) shall be deemed to be the lesser of the principal amount of such Debt and the value of the property subject to such Lien).

"DEFAULT" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"DISCLOSED LITIGATION" has the meaning specified in Section 3.01(b).

"DOLLARS" and the "\$" sign each means lawful currency of the United States of America.

"DOMESTIC LENDING OFFICE" means, with respect to any Lender, the office of such Lender specified as its "Domestic Lending Office" opposite its name on Schedule I hereto or in the Assignment and Acceptance pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Agent.

"EBITR" means, for any period, net income (or net loss) PLUS the sum of (a) net interest expense, (b) income tax expense and (c) rentals payable under leases of real or personal, or mixed, property, in each case determined in accordance with GAAP for such period, provided that there shall be excluded from net income (or net loss) (i) any items of gain or loss resulting from the sale of assets other than in the ordinary course of business and (ii) the income (or loss) of any party accrued prior to the date such party becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries, or such party's assets are acquired by the Borrower or any of its Subsidiaries.

"EFFECTIVE DATE" has the meaning specified in Section 3.01.

"ELIGIBLE ASSIGNEE" means (i) a Lender; (ii) an Affiliate of a Lender and (iii) any other Person approved by the Agent and, unless an Event of Default has occurred and is continuing at the time any assignment is effected in accordance with Section 8.07, the Borrower, such approval not to be unreasonably



withheld or delayed; PROVIDED, HOWEVER, that none of the Borrower, an Affiliate of the Borrower or any direct competitor of the Borrower shall qualify as an Eligible Assignee.

"ENVIRONMENTAL ACTION" means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating in any way to any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"ENVIRONMENTAL LAW" means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"ENVIRONMENTAL PERMIT" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"EQUIVALENT" in Dollars of any Committed Currency on any date means the equivalent in Dollars of such Committed Currency determined by using the quoted spot rate at which the Sub-Agent's principal office in London offers to exchange Dollars for such Committed Currency in London prior to 4:00 P.M. (London time) (unless otherwise indicated by the terms of this Agreement) on such date as is required pursuant to the terms of this Agreement, and the "Equivalent" in any Committed Currency of Dollars means the equivalent in such Committed Currency of Dollars determined by using the quoted spot rate at which the Sub-Agent's principal office in London offers to exchange such Committed Currency for Dollars in London prior to 4:00 P.M. (London time) (unless otherwise indicated by the terms of this Agreement) on such date as is required pursuant to the terms of this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA AFFILIATE" means any Person that for purposes of Title IV of ERISA is a member of the Borrower's controlled group, or under common control with the Borrower, within the meaning of Section 414 of the Internal Revenue Code.

"ERISA EVENT" means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of the Borrower or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by the Borrower or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for the imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the



occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan.

"EURIBO RATE" means the rate appearing on Page 248 of the Telerate Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to deposits in Euro by reference to the Banking Federation of the European Union Settlement Rates for deposits in Euro) at approximately 10:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for deposits in Euro with a maturity comparable to such Interest Period or, if for any reason such rate is not available, the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the respective rates per annum at which deposits in Euros are offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount substantially equal (x) in the case of Revolving Credit Borrowings, to such Reference Bank's Eurocurrency Rate Advance comprising part of such Revolving Credit Borrowing to be outstanding during such Interest Period and for a period equal to such Interest Period (subject, however, to the provisions of Section 2.09) or (y) in the case of Competitive Bid Borrowings, to the amount that would be the Reference Banks' respective ratable shares of such Borrowing if such Borrowing were to be a Revolving Credit Borrowing to be outstanding during such Interest Period and for a period equal to such Interest Period (subject, however, to the provisions of Section 2.09).

"EURO" means the lawful currency of the European Union as constituted by the Treaty of Rome which established the European Community, as such treaty may be amended from time to time and as referred to in the EMU legislation.

"EUROCURRENCY LIABILITIES" has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"EUROCURRENCY LENDING OFFICE" means, with respect to any Lender, the office of such Lender specified as its "Eurocurrency Lending Office" opposite its name on Schedule I hereto or in the Assignment and Acceptance pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Agent.

"EUROCURRENCY RATE" means, for any Interest Period for each Eurocurrency Rate Advance comprising part of the same Revolving Credit Borrowing, an interest rate per annum equal to the rate per annum obtained by dividing (a)(i) in the case of any Revolving Credit Advance denominated in Dollars or any Committed Currency other than Euro, the rate per annum (rounded upward to the nearest whole multiple of 1/16 of 1% per annum) appearing on Telerate Markets Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars or the applicable Committed Currency at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period or, if for any reason such rate is not available, the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the rate per annum at which deposits in Dollars or the applicable Committed Currency is offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount substantially equal to such Reference Bank's Eurocurrency Rate Advance comprising part of such Revolving Credit Borrowing to be outstanding during such Interest Period and for a period equal to such Interest Period or, (ii) in the case of any Tranche B Advance denominated in Euros, the EURIBO Rate by (b) a percentage equal to 100% minus the Eurocurrency Rate Reserve Percentage for such Interest Period. If the Telerate Markets Page 3750 (or any successor page) is unavailable, the Eurocurrency Rate for any Interest Period for each Eurocurrency Rate Advance comprising part of the same Revolving Credit Borrowing shall be determined by the Agent on the basis of applicable rates



furnished to and received by the Agent from the Reference Banks two Business Days before the first day of such Interest Period, SUBJECT, HOWEVER, to the provisions of Section 2.09.

"EUROCURRENCY RATE ADVANCE" means a Revolving Credit Advance denominated in Dollars or a Committed Currency that bears interest as provided in Section 2.08(a)(ii).

"EUROCURRENCY RATE RESERVE PERCENTAGE" for any Interest Period for all Eurocurrency Rate Advances or LIBO Rate Advances comprising part of the same Borrowing means the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurocurrency Rate Advances or LIBO Rate Advances is determined) having a term equal to such Interest Period.

"EVENTS OF DEFAULT" has the meaning specified in Section 6.01.

"EXECUTIVE OFFICER" means, with respect to any Person, the president, executive vice president, chief financial officer, treasurer, controller, secretary or any person holding comparable offices.

"FEDERAL FUNDS RATE" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding 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 of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it.

"FIXED RATE ADVANCES" has the meaning specified in Section 2.03(a)(i), which Advances shall be denominated in Dollars.

"GAAP" has the meaning specified in Section 1.03.

"GUARANTOR" means each of The Office Club, Inc., Eastman Office Supplies, Inc., OD International, Inc., Viking Office Products, Inc., OD of Texas, Inc. and each other Subsidiary of the Borrower that shall be required to execute and deliver a guaranty pursuant to Section 5.01(j).

"GUARANTY" has the meaning specified in Section 3.01(h)(ii).

"HAZARDOUS MATERIALS" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"HEDGE AGREEMENTS" means interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts and other similar agreements.

"INFORMATION MEMORANDUM" means the information memorandum dated March 13, 2002 used by the syndication agent in connection with the syndication of the Commitments.

"INITIAL ISSUING BANKS" means Wachovia and SunTrust Bank.

"INTEREST PERIOD" means, for each Eurocurrency Rate Advance comprising part of the same Revolving Credit Borrowing and each LIBO Rate Advance comprising part of the same Competitive Bid Borrowing, the period commencing on the date of such Eurocurrency Rate Advance or LIBO Rate Advance or the date of the Conversion of any Base Rate Advance into such Eurocurrency Rate Advance and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, with respect to Eurocurrency Rate Advances, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one, two, three or six months, as the Borrower may, upon notice received by the Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; PROVIDED, HOWEVER, that:

(a) the Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurocurrency Rate Advances comprising part of the same Revolving Credit Borrowing or for LIBO Rate Advances comprising part of the same Competitive Bid Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, PROVIDED, HOWEVER, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"INTERNAL REVENUE CODE" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"INVESTMENT" in any Person means any loan or advance to such Person, any purchase or other acquisition of any capital stock, warrants, rights, options, obligations or other securities or all of the business of such Person, any capital contribution to such Person or any other investment in such Person, including, without limitation, any arrangement pursuant to which the investor incurs Debt of the types referred to in clause (h) or (i) of the definition of "Debt" in respect of such Person.

"ISSUING BANK" means any Initial Issuing Bank or any Eligible Assignee to which a portion of the Letter of Credit Commitment hereunder has been assigned pursuant to Section 8.07 so long as such Eligible Assignee expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank or Eligible Assignee, as the case may be, shall have a Letter of Credit Commitment.

"L/C CASH COLLATERAL ACCOUNT" means an interest bearing cash collateral account to be established and maintained by the Agent, over which the Agent shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

"L/C RELATED DOCUMENTS" has the meaning specified in Section 2.07(b)(i).

"LENDERS" means the Initial Lenders, each Issuing Bank and each Person that shall become a party hereto pursuant to Section 8.07.

"LETTER OF CREDIT AGREEMENT" has the meaning specified in Section 2.04(a).

"LETTER OF CREDIT COMMITMENT" means, with respect to each Initial Issuing Bank, the amount set forth opposite such Initial Issuing Bank's name on the signature pages hereto under the caption "Letter of Credit Commitment" or, if such Initial Issuing Bank has entered into one or more Assignment and Acceptances, the amount set forth for such Issuing Bank in the Register maintained by the Agent pursuant to Section 8.07(d) as such Issuing Bank's "Letter of Credit Commitment", as such amount may be reduced at or prior to such time pursuant to Section 2.06.

"LETTER OF CREDIT FACILITY" means, at any time, an amount equal to the lesser of (a) the amount of the Issuing Banks' Letter of Credit Commitments at such time and (b) \$150,000,000, as such amount may be reduced at or prior to such time pursuant to Section 2.06.

"LETTERS OF CREDIT" has the meaning specified in Section 2.01(b).

"LIBO RATE" means, for any Interest Period for all LIBO Rate Advances comprising part of the same Competitive Bid Borrowing, an interest rate per annum equal to the rate per annum obtained by dividing (a)(i) in the case of any Competitive Bid Borrowing denominated in Dollars or any Committed Currency other than Euros, the rate per annum (rounded upward to the nearest whole multiple of 1/16 of 1% per annum) appearing on Telerate Markets Page 3750 (or any successor page) as the London interbank offered rate for deposits in Dollars or the applicable Committed Currency at approximately 11:00 A.M. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period or, if for any reason such rate is not available, the average (rounded upward to the nearest whole multiple of 1/16 of 1% per annum, if such average is not such a multiple) of the rate per annum at which deposits in Dollars or the applicable Committed Currency is offered by the principal office of each of the Reference Banks in London, England to prime banks in the London interbank market at 11:00 A.M. (London time) two Business Days before the first day of such Interest Period in an amount substantially equal to the amount that would be the Reference Banks' respective ratable shares of such Borrowing if such Borrowing were to be a Revolving Credit Borrowing to be outstanding during such Interest Period and for a period equal to such Interest Period or (ii) in the case of any Competitive Bid Borrowing denominated in Euros, the EURIBO Rate by (b) a percentage equal to 100% minus the Eurocurrency Rate Reserve Percentage for such Interest Period. If the Telerate Markets Page 3750 (or any successor page) is unavailable, the LIBO Rate for any Interest Period for each LIBO Rate Advance comprising part of the same Competitive Bid Borrowing shall be determined by the Agent on the basis of applicable rates furnished to and received by the Agent from the Reference Banks two Business Days before the first day of such Interest Period, SUBJECT, HOWEVER, to the provisions of Section 2.09.

"LIBO RATE ADVANCES" means a Competitive Bid Advance denominated in Dollars and bearing interest based on the LIBO Rate.

"LIEN" means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

"LOAN DOCUMENT" means this Agreement, the Notes, the Guaranties and each Letter of Credit Agreement.

"LOAN PARTY" means the Borrower and each Guarantor.

"MARKETABLE SECURITIES" means any of the following, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens: (a) direct obligations of the United States or any agency

thereof, or obligations guaranteed by the United States or any agency thereof and maturing within three years from the date of creation thereof, (b) commercial paper, bankers acceptances and corporate obligations maturing within one year from the date of creation thereof, having a rating at the time as of which any determination is made of P-1 (or higher) according to Moody's or as A-1 (or higher) according to S&P or the equivalent thereof if by another nationally recognized credit rating agency and (c) time deposits maturing within one year from the date of purchase hereof, including certificates of deposit issued by any Lender and any office located in the United States of any bank or trust company which is organized under the laws of the United States or any state thereof and has total assets aggregating at least \$500,000,000, including, without limitation, any such deposits in eurodollars issued by a foreign branch of any such bank or trust company.

"MATERIAL ADVERSE CHANGE" means any material adverse change in the business, condition (financial or otherwise), performance or results of operations of the Borrower or the Borrower and its Subsidiaries taken as a whole.

"MATERIAL ADVERSE EFFECT" means a material adverse effect on (a) the business, condition (financial or otherwise), operations or prospects of the Borrower or the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under any Loan Document or (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party.

"MATERIAL SUBSIDIARY" means each Subsidiary of the Borrower having assets that accounted for or produced, or would on a pro forma basis would have produced, more than 10% of Consolidated EBITR of the Borrower during any of the three most recently completed fiscal years of the Borrower.

"MOODY'S" means Moody's Investors Service, Inc.

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"MULTIEMPLOYER PLAN" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"MULTIPLE EMPLOYER PLAN" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower or any ERISA Affiliate and at least one Person other than the Borrower and the ERISA Affiliates or (b) was so maintained and in respect of which the Borrower or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"NOTE" means a Revolving Credit Note or a Competitive Bid Note.

"NOTICE OF COMPETITIVE BID BORROWING" has the meaning specified in Section 2.03(a).

"NOTICE OF REVOLVING CREDIT BORROWING" has the meaning specified in Section 2.02(a).

"PAYMENT OFFICE" means, for any payments in Dollars, the office of the Agent in the United States that it shall designate from time to time to the Borrower and the Lenders and, for payments in any Committed Currency, such office the applicable Agent's Correspondent.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"PERMITTED LIENS" means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for taxes, assessments and governmental charges or levies to the extent not required to be paid under Section 5.01(b) hereof; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business (other than those being contested in good faith by appropriate proceedings and properly reserved in accordance with generally accepted accounting



principles); (c) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations; and (d) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes.

"PERSON" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

"PLAN" means a Single Employer Plan or a Multiple Employer Plan.

"PRO RATA SHARE" of any amount means, with respect to any Lender at any time, the product of such amount TIMES a fraction the numerator of which is the amount of such Lender's Tranche A Commitment at such time (or, if the Tranche A Commitments shall have been terminated pursuant to Section 2.06 or 6.01, such Lender's Tranche A Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Tranche A Commitments at such time (or, if the Tranche A Commitments shall have been terminated pursuant to Section 2.06 or 6.01, the aggregate amount of all Tranche A Commitments as in effect immediately prior to such termination).

"PUBLIC DEBT RATING" means, as of any date, the rating that has been most recently announced by either S&P or Moody's, as the case may be, for any class of non-credit enhanced long-term senior unsecured debt issued by the Borrower or, if either such rating agency shall have issued more than one such rating, the lowest such rating issued by such rating agency. For purposes of the foregoing, (a) if only one of S&P and Moody's shall have in effect a Public Debt Rating, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be determined by reference to the available rating; (b) if neither S&P nor Moody's shall have in effect a Public Debt Rating, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee will be set in accordance with Level 5 under the definition of "APPLICABLE MARGIN", "APPLICABLE PERCENTAGE" or "APPLICABLE UTILIZATION FEE", as the case may be; (c) if the ratings established by S&P and Moody's shall fall within different levels, the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be based upon the higher rating unless the differential is two levels or more, in which case the Applicable Margin, the Applicable Percentage and the Applicable Utilization Fee shall be based upon the level that is one level lower than the higher rating; (d) if any rating established by S&P or Moody's shall be changed, such change shall be effective as of the date on which such change is first announced publicly by the rating agency making such change; and (e) if S&P or Moody's shall change the basis on which ratings are established, each reference to the Public Debt Rating announced by S&P or Moody's, as the case may be, shall refer to the then equivalent rating by S&P or Moody's, as the case may be.

"REFERENCE BANKS" means Wachovia and Citibank.

"REGISTER" has the meaning specified in Section 8.07(d).

"REQUIRED LENDERS" means at any time Lenders owed at least a majority in interest of the then aggregate unpaid principal amount (based on the Equivalent in Dollars at such time) of the Revolving Credit Advances owing to Lenders, or, if no such principal amount is then outstanding, Lenders having at least a majority in interest of the Tranche A Commitments.

"REVOLVING CREDIT ADVANCE" means a Tranche A Advance or a Tranche B Advance.

"REVOLVING CREDIT BORROWING" means a borrowing consisting of simultaneous Revolving Credit Advances of the same Type made by each of the Lenders pursuant to Section 2.01.

"REVOLVING CREDIT BORROWING MINIMUM" means, in respect of Tranche A Advances, \$3,000,000, in respect of Tranche B Advances denominated in Sterling, (pound)3,000,000, in respect of Tranche B Advances



denominated in Yen, (Y)300,000,000 and, in respect of Tranche B Advances denominated in Euros, (pound)3,000,000.

"REVOLVING CREDIT BORROWING MULTIPLE" means, in respect of Tranche A Advances, \$500,000, in respect of Tranche B Advances denominated in Sterling, (pound)500,000, in respect of Tranche B Advances denominated in Yen, (Y)50,000,000 and, in respect of Tranche B Advances denominated in Euros, (pound)500,000.

"REVOLVING CREDIT COMMITMENT" means a Tranche A Commitment or a Tranche B Commitment.

"REVOLVING CREDIT NOTE" means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.17 in substantially the form of Exhibit A-1 hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Revolving Credit Advances made by such Lender.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"SINGLE EMPLOYER PLAN" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of the Borrower or any ERISA Affiliate and no Person other than the Borrower and the ERISA Affiliates or (b) was so maintained and in respect of which the Borrower or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"SOLVENT" and "SOLVENCY" mean, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"SUB-AGENT" means Wachovia Bank, National Association, London Branch.

"SUBORDINATED DEBT" means Debt of the Borrower and its Subsidiaries subordinated to all obligations of the Borrower and its Subsidiaries arising under the Loan Documents on terms and conditions satisfactory in all respects to the Agent and the Required Lenders, including without limitation, with respect to interest rates, payment terms, maturities, amortization schedules, covenants, defaults, remedies, and subordination provisions, as evidenced by the written approval of the Agent and Required Lenders, including but not limited to the Borrower's Convertible Subordinated Debt.

"SUBSIDIARY" of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"TERMINATION DATE" means the earlier of April 23, 2005 and the date of termination in whole of the Commitments pursuant to Section 2.06 or 6.01.



"TRANCHE A ADVANCE" means an advance by a Lender to the Borrower as part of a Tranche A Borrowing and refers to a Base Rate Advance or a Eurocurrency Rate Advance (each of which shall be a "TYPE" of Revolving Credit Advance).

"TRANCHE A COMMITMENT" means, with respect to any Lender at any time, the amount set forth opposite such Lender's name on the signature pages hereto under the caption "Tranche A Commitment" or, if such Lender has entered into one or more Assignment and Acceptances, set forth for such Lender in the Register maintained by the Agent pursuant to Section 8.07(d) as such Lender's "Tranche A Commitment", as such amount may be reduced at or prior to such time pursuant to Section 2.06.

"TRANCHE B ADVANCE" means an advance by a Tranche B Lender to the Borrower as part of a Tranche B Borrowing and refers to a Eurocurrency Rate Advance denominated in a Committed Currency.

"TRANCHE B COMMITMENT" means, with respect to any Lender at any time, the amount set forth opposite such Lender's name on the signature pages hereto under the caption "Tranche B Commitment" or, if such Lender has entered into one or more Assignment and Acceptances, set forth for such Lender in the Register maintained by the Agent pursuant to Section 8.07(d) as such Lender's "Tranche B Commitment", as such amount may be reduced at or prior to such time pursuant to Section 2.06.

"TRANCHE B LENDER" means each Lender that has a Tranche B Commitment on the signature pages hereof or any Eligible Assignee to which a portion of the Tranche B Commitment hereunder has been assigned pursuant to Section 8.07.

"UNUSED COMMITMENT" means, with respect to each Lender at any time, (a) such Lender's Tranche A Commitment at such time MINUS (b) the sum of (i) the aggregate principal amount of all Tranche A Advances made by such Lender (in its capacity as a Lender) and outstanding at such time, PLUS (ii) such Lender's Pro Rata Share of (A) the aggregate principal amount of Tranche B Advances then outstanding (based on the Equivalent in Dollars at such time), (B) the aggregate Available Amount of all the Letters of Credit outstanding at such time, (C) the aggregate principal amount of all Tranche A Advances made by each Issuing Bank pursuant to Section 2.04(c) that have not been ratably funded by such Lender and outstanding at such time and (D) the aggregate principal amount of Competitive Bid Advances then outstanding.

"USAGE" means, at any time the sum of the aggregate principal amount of the Advances (based in respect of any Tranche B Advances on the Equivalent in Dollars at such time) then outstanding PLUS the Available Amount of the outstanding Letters of Credit.

"VOTING STOCK" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

SECTION 1.02. COMPUTATION OF TIME PERIODS. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

SECTION 1.03. ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of the financial statements referred to in Section 4.01(e) ("GAAP").

## ARTICLE II

### AMOUNTS AND TERMS OF THE ADVANCES AND LETTERS OF CREDIT

SECTION 2.01. THE REVOLVING CREDIT ADVANCES AND LETTERS OF CREDIT. (a) TRANCHE A ADVANCES. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Tranche A Advances denominated in Dollars to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an aggregate amount not to exceed at any time such Lender's Unused Commitment. Each Tranche A Borrowing shall be in an amount not less than the Revolving Credit Borrowing Minimum or the Revolving Credit Borrowing Multiple in excess thereof and shall consist of Tranche A Advances of the same Type made on the same day by the Lenders ratably according to their respective Tranche A Commitments. Within the limits of each Lender's Tranche A Commitment, the Borrower may borrow under this Section 2.01, prepay pursuant to Section 2.11 and reborrow under this Section 2.01(a).

(b) LETTERS OF CREDIT. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, to issue standby, commercial and documentary letters of credit (each, a "LETTER OF CREDIT") for the account of the Borrower from time to time on any Business Day during the period from the Effective Date until 30 days before the Termination Date in an aggregate Available Amount (i) for all Letters of Credit issued by the Issuing Banks not to exceed at any time the lesser of (x) the Letter of Credit Facility at such time and (y) such Issuing Bank's Letter of Credit Commitment at such time and (ii) for each such Letter of Credit not to exceed an amount equal to the Unused Commitments of the Lenders at such time. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary to require renewal) later than 10 Business Days before the Termination Date. Within the limits referred to above, the Borrower may request the issuance of Letters of Credit under this Section 2.01(b), repay any Tranche A Advances resulting from drawings thereunder pursuant to Section 2.04(c) and request the issuance of additional Letters of Credit under this Section 2.01(b).

(c) TRANCHE B ADVANCES. Each Tranche B Lender severally agrees, on the terms and conditions hereinafter set forth, to make Tranche B Advances denominated in a Committed Currency to the Borrower from time to time on any Business Day during the period from the Effective Date until the Termination Date in an aggregate amount (based on the Equivalent thereof in Dollars determined on the date of delivery of the applicable Notice of Revolving Credit Borrowing) not to exceed at any time the lesser of such Lender's Unused Commitment and such Lender's unused Tranche B Commitment. Each Tranche B Borrowing shall be in an amount not less than the Revolving Credit Borrowing Minimum or the Revolving Credit Borrowing Multiple in excess thereof and shall consist of Tranche B Advances as Eurocurrency Rate Advances in the same currency made on the same day by the Tranche B Lenders ratably according to their respective Tranche B Commitments. Within the limits of each Lender's Tranche B Commitment, the Borrower may borrow under this Section 2.01, prepay pursuant to Section 2.11 and reborrow under this Section 2.01(c).

SECTION 2.02. MAKING THE REVOLVING CREDIT ADVANCES. (a) Each Revolving Credit Borrowing shall be made on notice, given not later than (x) 12:00 noon (New York City time) on the third Business Day prior to the date of the proposed Revolving Credit Borrowing in the case of a Revolving Credit Borrowing of Tranche A Advances consisting of Eurocurrency Rate Advances, (y) 4:00 P.M. (London time) on the fourth Business Day prior to the date of the proposed Revolving Credit Borrowing in the case of a Revolving Credit Borrowing of Tranche B Advances, or (z) 12:00 noon (New York City time) on the date of the proposed Revolving Credit Borrowing in the case of a Revolving Credit Borrowing of Tranche A Advances consisting of Base Rate Advances, by the Borrower to the Agent (and, in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances, simultaneously to the Sub-Agent), which shall give to each Lender prompt notice thereof by telecopier or telex. Each such notice of a Revolving Credit Borrowing (a "NOTICE OF REVOLVING CREDIT BORROWING") shall be by telephone, confirmed promptly in writing, or telecopier or telex in substantially the form of Exhibit B-1 hereto, specifying therein the requested (i) date of such Revolving Credit Borrowing, (ii) whether such Revolving Credit Borrowing consists of Tranche A Advances or Tranche B Advances, (iii) Type of Advances comprising such Revolving Credit Borrowing, (iv) aggregate amount of such Revolving Credit Borrowing and (iv) in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances, initial Interest Period and, if consisting of Tranche B Advances, currency for each such Advance. Each Lender shall, before 1:00 P.M. (New York City time) on the date of such Revolving Credit Borrowing, in the case of a Revolving Credit Borrowing consisting of Advances denominated in Dollars, and before 11:00 A.M. (London time) on the date of such Revolving Credit Borrowing, in the case of a Revolving Credit Borrowing consisting of Eurocurrency Rate Advances denominated in any Committed Currency, make available for the account of its Applicable Lending Office to the Agent at

the applicable Agent's Account, in same day funds, such Lender's ratable portion of such Revolving Credit Borrowing. After the Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the

Agent will make such funds available to the Borrower at the Agent's address referred to in Section 8.02 or at the applicable Payment Office, as the case may be.

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower may not select Eurocurrency Rate Advances for any Revolving Credit Borrowing if the aggregate amount of such Revolving Credit Borrowing is less than the Revolving Credit Borrowing Minimum or if the obligation of the Lenders to make Eurocurrency Rate Advances shall then be suspended pursuant to Section 2.09 or 2.13 and (ii) the Eurocurrency Rate Advances may not be outstanding as part of more than sixteen separate Revolving Credit Borrowings.

(c) Each Notice of Revolving Credit Borrowing shall be irrevocable and binding on the Borrower. In the case of any Revolving Credit Borrowing that the related Notice of Revolving Credit Borrowing specifies is to be comprised of Eurocurrency Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Revolving Credit Borrowing for such Revolving Credit Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Credit Advance to be made by such Lender as part of such Revolving Credit Borrowing when such Revolving Credit Advance, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the date of any Revolving Credit Borrowing that such Lender will not make available to the Agent such Lender's ratable portion of such Revolving Credit Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Revolving Credit Borrowing in accordance with subsection (a) of this Section 2.02 and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at (i) in the case of the Borrower, the higher of (A) the interest rate applicable at the time to Revolving Credit Advances comprising such Revolving Credit Borrowing and (B) the cost of funds incurred by the Agent in respect of such amount and (ii) in the case of such Lender, (A) the Federal Funds Rate in the case of Advances denominated in Dollars or (B) the cost of funds incurred by the Agent in respect of such amount in the case of Advances denominated in Committed Currencies. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Credit Advance as part of such Revolving Credit Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Credit Advance to be made by it as part of any Revolving Credit Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Credit Advance on the date of such Revolving Credit Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Credit Advance to be made by such other Lender on the date of any Revolving Credit Borrowing.

SECTION 2.03. THE COMPETITIVE BID ADVANCES. (a) Each Lender severally agrees that the Borrower may make Competitive Bid Borrowings under this Section 2.03 from time to time on any Business Day during the period from the date hereof until the date occurring 30 days prior to the Termination Date in the manner set forth below; PROVIDED that, following the making of each Competitive Bid Borrowing, (x) the aggregate amount of the Competitive Bid Advances of all Lenders then outstanding shall not exceed \$100,000,000 and (y) the aggregate amount of the Advances then outstanding shall not exceed the aggregate amount of the Commitments of the Lenders (computed without regard to any Competitive Bid Reduction).

(i) The Borrower may request a Competitive Bid Borrowing under this Section 2.03 by delivering to the Agent, by telecopier or telex, a notice of a Competitive Bid Borrowing (a "NOTICE OF COMPETITIVE BID BORROWING"), in substantially the form of Exhibit B-2 hereto, specifying therein the requested (v) date of such proposed Competitive Bid Borrowing, (w) aggregate amount of such proposed Competitive Bid Borrowing, (x) in the case of a Competitive Bid Borrowing consisting of LIBO Rate



Advances, Interest Period, or in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances, maturity date for repayment of each Fixed Rate Advance to be made as part of such Competitive Bid Borrowing (which maturity date may not be earlier than the date occurring 7 days after the date of such Competitive Bid Borrowing or later than the earlier of (I) in the case of Fixed Rate Advances, 180 days and, in the case of LIBO Rate Advances, one, two, three, six or nine months, after the date of such Competitive Bid Borrowing and (II) the Termination Date), (y) interest payment date or dates relating thereto, and (z) other terms (if any) to be applicable to such Competitive Bid Borrowing, not later than 12:00 noon (New York City time) (A) at least one Business Day prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall specify in the Notice of Competitive Bid Borrowing that the rates of interest to be offered by the Lenders shall be fixed rates per annum (the Advances comprising any such Competitive Bid Borrowing being referred to herein as "FIXED RATE ADVANCES") and (B) at least four Business Days prior to the date of the proposed Competitive Bid Borrowing, if the Borrower shall instead specify in the Notice of Competitive Bid Borrowing that the Advances comprising such Competitive Bid Borrowing shall be LIBO Rate Advances. Each Notice of Competitive Bid Borrowing shall be irrevocable and binding on the Borrower. The Agent shall in turn promptly notify each Lender of each request for a Competitive Bid Borrowing received by it from the Borrower by sending such Lender a copy of the related Notice of Competitive Bid Borrowing.

(ii) Each Lender may, if, in its sole discretion, it elects to do so, irrevocably offer to make one or more Competitive Bid Advances to the Borrower as part of such proposed Competitive Bid Borrowing at a rate or rates of interest specified by such Lender in its sole discretion, by notifying the Agent (which shall give prompt notice thereof to the Borrower), (A) before 10:30 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and (B) before 11:00 A.M. (New York City time) three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances of the minimum amount and maximum amount of each Competitive Bid Advance which such Lender would be willing to make as part of such proposed Competitive Bid Borrowing (which amounts may, subject to the proviso to the first sentence of this Section 2.03(a), exceed such Lender's Commitment, if any), the rate or rates of interest therefor and such Lender's Applicable Lending Office with respect to such Competitive Bid Advance; PROVIDED that if the Agent in its capacity as a Lender shall, in its sole discretion, elect to make any such offer, it shall notify the Borrower of such offer at least 30 minutes before the time and on the date on which notice of such election is to be given to the Agent, by the other Lenders. If any Lender shall elect not to make such an offer, such Lender shall so notify the Agent before 11:00 A.M. (New York City time) on the date on which notice of such election is to be given to the Agent by the other Lenders, and such Lender shall not be obligated to, and shall not, make any Competitive Bid Advance as part of such Competitive Bid Borrowing; PROVIDED that the failure by any Lender to give such notice shall not cause such Lender to be obligated to make any Competitive Bid Advance as part of such proposed Competitive Bid Borrowing.

(iii) The Borrower shall, in turn, (A) before 11:30 A.M. (New York City time) on the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of Fixed Rate Advances and (B) before 12:00 noon (New York City time) three Business Days before the date of such proposed Competitive Bid Borrowing, in the case of a Competitive Bid Borrowing consisting of LIBO Rate Advances, either:

(x) cancel such Competitive Bid Borrowing by giving the Agent notice to that effect, or

(y) accept one or more of the offers made by any Lender or Lenders pursuant to paragraph (ii) above, in its sole discretion, by giving notice to the Agent of the amount of each Competitive Bid Advance (which amount shall be equal to or greater than the minimum amount, and equal to or less than the maximum amount, notified to the Borrower by the Agent on behalf of such Lender for such Competitive Bid Advance pursuant to paragraph (ii) above) to be made by each Lender as part of such Competitive Bid Borrowing, and reject any remaining offers made by



Lenders pursuant to paragraph (ii) above by giving the Agent notice to that effect. The Borrower shall accept the offers made by any Lender or Lenders to make Competitive Bid Advances in order of the lowest to the highest rates of interest offered by such Lenders. If two or more Lenders have offered the same interest rate, the amount to be borrowed at such interest rate will be allocated among such Lenders in proportion to the amount that each such Lender offered at such interest rate.

(iv) If the Borrower notifies the Agent that such Competitive Bid Borrowing is cancelled pursuant to paragraph (iii)(x) above, the Agent shall give prompt notice thereof to the Lenders and such Competitive Bid Borrowing shall not be made.

(v) If the Borrower accepts one or more of the offers made by any Lender or Lenders pursuant to paragraph (iii)(y) above, the Agent shall in turn promptly notify (A) each Lender that has made an offer as described in paragraph (ii) above, of the date and aggregate amount of such Competitive Bid Borrowing and whether or not any offer or offers made by such Lender pursuant to paragraph (ii) above have been accepted by the Borrower, (B) each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, of the amount of each Competitive Bid Advance to be made by such Lender as part of such Competitive Bid Borrowing, and (C) each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing, upon receipt, that the Agent has received forms of documents appearing to fulfill the applicable conditions set forth in Article III. Each Lender that is to make a Competitive Bid Advance as part of such Competitive Bid Borrowing shall, before 1:00 P.M. (New York City time) on the date of such Competitive Bid Borrowing specified in the notice received from the Agent pursuant to clause (A) of the preceding sentence or any later time when such Lender shall have received notice from the Agent pursuant to clause (C) of the preceding sentence, make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, such Lender's portion of such Competitive Bid Borrowing. Upon fulfillment of the applicable conditions set forth in Article III and after receipt by the Agent of such funds, the Agent will make such funds available to the Borrower at the Agent's address referred to in Section 8.02. Promptly after each Competitive Bid Borrowing the Agent will notify each Lender of the amount of the Competitive Bid Borrowing, the consequent Competitive Bid Reduction and the dates upon which such Competitive Bid Reduction commenced and will terminate.

(vi) If the Borrower notifies the Agent that it accepts one or more of the offers made by any Lender or Lenders pursuant to paragraph (iii)(y) above, such notice of acceptance shall be irrevocable and binding on the Borrower. The Borrower shall indemnify each Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in the related Notice of Competitive Bid Borrowing for such Competitive Bid Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Competitive Bid Advance to be made by such Lender as part of such Competitive Bid Borrowing when such Competitive Bid Advance, as a result of such failure, is not made on such date.

(b) Each Competitive Bid Borrowing shall be in an aggregate amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof and, following the making of each Competitive Bid Borrowing, the Borrower and each Lender shall be in compliance with the limitations set forth in the proviso to the first sentence of subsection (a) above.

(c) Within the limits and on the conditions set forth in this Section 2.03, the Borrower may from time to time borrow under this Section 2.03, repay or prepay pursuant to subsection (d) below, and reborrow under this Section 2.03, PROVIDED that a Competitive Bid Borrowing shall not be made within three Business Days of the date of any other Competitive Bid Borrowing.

(d) The Borrower shall repay to the Agent for the account of each Lender that has made a Competitive Bid Advance, on the maturity date of each Competitive Bid Advance (such maturity date being that



specified by the Borrower for repayment of such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and provided in the Competitive Bid Note evidencing such Competitive Bid Advance), the then unpaid principal amount of such Competitive Bid Advance. The Borrower shall have no right to prepay any principal amount of any Competitive Bid Advance unless, and then only on the terms, specified by the Borrower for such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above and set forth in the Competitive Bid Note evidencing such Competitive Bid Advance.

(e) The Borrower shall pay interest on the unpaid principal amount of each Competitive Bid Advance from the date of such Competitive Bid Advance to the date the principal amount of such Competitive Bid Advance is repaid in full, at the rate of interest for such Competitive Bid Advance specified by the Lender making such Competitive Bid Advance in its notice with respect thereto delivered pursuant to subsection (a)(ii) above, payable on the interest payment date or dates specified by the Borrower for such Competitive Bid Advance in the related Notice of Competitive Bid Borrowing delivered pursuant to subsection (a)(i) above, as provided in the Competitive Bid Note evidencing such Competitive Bid Advance. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Borrower shall pay interest on the amount of unpaid principal of and interest on each Competitive Bid Advance owing to a Lender, payable in arrears on the date or dates interest is payable thereon, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Competitive Bid Advance under the terms of the Competitive Bid Note evidencing such Competitive Bid Advance unless otherwise agreed in such Competitive Bid Note.

(f) The indebtedness of the Borrower resulting from each Competitive Bid Advance made to the Borrower as part of a Competitive Bid Borrowing shall be evidenced by a separate Competitive Bid Note of the Borrower payable to the order of the Lender making such Competitive Bid Advance.

SECTION 2.04. ISSUANCE OF AND DRAWINGS AND REIMBURSEMENT UNDER LETTERS OF CREDIT. (a) REQUEST FOR ISSUANCE. (i) Each Letter of Credit shall be issued upon notice, given not later than 11:00 A.M. (New York City time) on the third Business Day prior to the date of the proposed issuance of such Letter of Credit, by the Borrower to any Issuing Bank, and such Issuing Bank shall give the Agent, prompt notice thereof by telex, telecopier or cable. Each such notice of issuance of a Letter of Credit (a "NOTICE OF ISSUANCE") shall be by telex, telecopier or cable, confirmed immediately in writing, specifying therein the requested (A) date of such issuance (which shall be a Business Day), (B) Available Amount of such Letter of Credit, (C) expiration date of such Letter of Credit, (D) name and address of the beneficiary of such Letter of Credit and (E) form of such Letter of Credit, and shall be accompanied by such application and agreement for letter of credit as such Issuing Bank may reasonably specify to the Borrower for use in connection with such requested Letter of Credit (a "LETTER OF CREDIT AGREEMENT"). If the requested form (but not the terms) of such Letter of Credit is acceptable to such Issuing Bank in its sole discretion, such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Article III, make such Letter of Credit available to the Borrower at its office referred to in Section 8.02 or as otherwise agreed with the Borrower in connection with such issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(b) 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 Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Share of the aggregate amount available to be drawn under such Letter of Credit. The Borrower hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of such Issuing Bank, such Lender's Pro Rata Share of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Borrower on the date made, or of any reimbursement payment required to be refunded to the Borrower for any reason. 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 reduction or termination of the Tranche A Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.



(c) DRAWING AND REIMBURSEMENT. The payment by an Issuing Bank of a draft drawn under any Letter of Credit shall constitute for all purposes of this Agreement the making by any such Issuing Bank of a Tranche A Advance, which shall be a Base Rate Advance, in the amount of such draft. Upon written demand by such Issuing Bank, with a copy of such demand to the Agent, each Lender shall pay to the Agent such Lender's Pro Rata Share of such outstanding Tranche A Advance, by making available for the account of its Applicable Lending Office to the Agent for the account of such Issuing Bank, by deposit to the Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Tranche A Advance to be funded by such Lender. Promptly after receipt thereof, the Agent shall transfer such funds to such Issuing Bank. Each Lender agrees to fund its Pro Rata Share of an outstanding Tranche A Advance on (i) the Business Day on which demand therefor is made by such Issuing Bank, PROVIDED that notice of such demand is given not later than 11:00 A.M. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Lender shall not have so made the amount of such Tranche A Advance available to the Agent, such Lender agrees to pay to the Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Agent, at the Federal Funds Rate for its account or the account of such Issuing Bank, as applicable. If such Lender shall pay to the Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Tranche A Advance made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Tranche A Advance made by such Issuing Bank shall be reduced by such amount on such Business Day.

(d) LETTER OF CREDIT REPORTS. Each Issuing Bank shall furnish (A) to the Agent on the first Business Day of each week a written report summarizing issuance and expiration dates of Letters of Credit issued during the previous week and drawings during such week under all Letters of Credit, (B) to each Lender on the date of each issuance of a Letter of Credit or a drawing thereunder, notice of such issuance or drawing, (C) to the Agent and each Lender on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit and (D) to the Borrower on the first Business Day of each fiscal quarter a written report summarizing the issuance and expiration dates of Letters of Credit issued during the previous fiscal quarter, drawings during such fiscal quarter under all Letters of Credit.

(e) FAILURE TO MAKE REVOLVING CREDIT ADVANCES. The failure of any Lender to make the Revolving Credit Advance to be made by it on the date specified in Section 2.04(c) shall not relieve any other Lender of its obligation hereunder to make its Revolving Credit Advance on such date, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Credit Advance to be made by such other Lender on such date.

SECTION 2.05. FEES. (a) FACILITY FEE. The Borrower agrees to pay to the Agent for the account of each Lender a facility fee on the aggregate amount of such Lender's Tranche A Commitment from the Effective Date in the case of each Initial Lender and from the effective date specified in the Assignment and Acceptance pursuant to which it became a Lender in the case of each other Lender until the Termination Date at a rate per annum equal to the Applicable Percentage in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December, commencing June 30, 2002, and on the Termination Date.

(b) LETTER OF CREDIT FEES. The Borrower shall pay to the Agent for the account of each Lender a commission on such Lender's Pro Rata Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time at a rate per annum equal to the Applicable Margin for Eurocurrency Rate Advances in effect from time to time plus the Applicable Utilization Fee, if any, payable in arrears quarterly on the fifth Business Day of January, April, July and October, commencing in July, 2002, and on the Termination Date.

(c) AGENT'S FEES. The Borrower shall pay to the Agent for its own account such fees as may from time to time be agreed between the Borrower and the Agent.

SECTION 2.06. OPTIONAL TERMINATION OR REDUCTION OF THE COMMITMENTS. The Borrower shall have the right, upon at least three Business Days' notice to the Agent, to terminate in whole or permanently reduce ratably in part the respective Unused Commitments of the Lenders, PROVIDED that (x) each partial reduction shall be in the aggregate amount of \$1,000,000 or an integral multiple of \$100,000 in excess thereof, (y) each partial



reduction shall automatically reduce the Letter of Credit Commitment to the extent that, after giving effect to such reduction of the Unused Commitments, the Letter of Credit Commitment exceeds the Tranche A Commitments and (z) each partial reduction shall automatically ratably reduce the respective Tranche B Commitments of each Tranche B Lender to the extent that, after giving effect to such reduction of the Unused Commitments, such Lender's Tranche B Commitment exceeds such Lender's Tranche A Commitment.

SECTION 2.07. REPAYMENT OF REVOLVING CREDIT ADVANCES. (a) The Borrower shall repay to the Agent for the ratable account of the Lenders on the Termination Date the aggregate principal amount of the Revolving Credit Advances then outstanding.

(b) The obligations of the Borrower under this Agreement, any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Borrower is without prejudice to, and does not constitute a waiver of, any rights the Borrower might have or might acquire under Section 8.14 or otherwise as a result of the payment by any Lender of any draft or the reimbursement by the Borrower thereof):

(i) any lack of validity or enforceability of any Loan Document, any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (all of the foregoing being, collectively, the "L/C RELATED DOCUMENTS");

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, any Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(vi) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

SECTION 2.08. INTEREST ON REVOLVING CREDIT ADVANCES. (a) SCHEDULED INTEREST. The Borrower shall pay interest on the unpaid principal amount of each Revolving Credit Advance owing to each Lender from the date of such Revolving Credit Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) BASE RATE ADVANCES. During such periods as such Revolving Credit Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time PLUS (y) the Applicable Margin in effect from time to time PLUS (z) the Applicable Utilization Fee, if

any, in effect from time to time, payable in arrears quarterly on the last day of each March, June, September and December during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) EUROCURRENCY RATE ADVANCES. During such periods as such Revolving Credit Advance is a Eurocurrency Rate Advance, a rate per annum equal at all times during each Interest Period for such Revolving Credit Advance to the sum of (x) the Eurocurrency Rate for such Interest Period for such Revolving Credit Advance PLUS (y) the Applicable Margin in effect from time to time PLUS (z) the Applicable Utilization Fee, if any, in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurocurrency Rate Advance shall be Converted or paid in full.

(b) DEFAULT INTEREST. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require the Borrower to pay interest ("DEFAULT INTEREST") on (i) the unpaid principal amount of each Revolving Credit Advance owing to each Lender, payable in arrears on the dates referred to in clause (a)(i) or (a)(ii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Revolving Credit Advance pursuant to clause (a)(i) or (a)(ii) above and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Advances pursuant to clause (a)(i) above; PROVIDED, HOWEVER, that following acceleration of the Advances pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

SECTION 2.09. INTEREST RATE DETERMINATION. (a) Each Reference Bank agrees to furnish to the Agent timely information for the purpose of determining each Eurocurrency Rate and each LIBO Rate. If any one or more of the Reference Banks shall not furnish such timely information to the Agent for the purpose of determining any such interest rate, the Agent shall determine such interest rate on the basis of timely information furnished by the remaining Reference Banks. The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.08(a)(i) or (ii), and the rate, if any, furnished by each Reference Bank for the purpose of determining the interest rate under Section 2.08(a)(ii).

(b) If, with respect to any Eurocurrency Rate Advances, the Required Lenders notify the Agent that (i) they are unable to obtain matching deposits in the London inter-bank market at or about 11:00 A.M. (London time) on the second Business Day before the making of a Borrowing in sufficient amounts to fund their respective Revolving Credit Advances as a part of such Borrowing during its Interest Period or (ii) the Eurocurrency Rate for any Interest Period for such Advances will not adequately reflect the cost to such Required Lenders of making, funding or maintaining their respective Eurocurrency Rate Advances for such Interest Period, the Agent shall forthwith so notify the Borrower and the Lenders, whereupon (A) the Borrower will, on the last day of the then existing Interest Period therefor, (1) if such Eurocurrency Rate Advances are denominated in Dollars, either (x) prepay such Advances or (y) Convert such Advances into Base Rate Advances and (2) if such Eurocurrency Rate Advances are denominated in any Committed Currency, either (x) prepay such Advances or (y) exchange such Advances into an Equivalent amount of Dollars and Convert such Advances into Base Rate Advances and (B) the obligation of the Lenders to make, or to Convert Revolving Credit Advances into, Eurocurrency Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist; PROVIDED that, if the circumstances set forth in clause (ii) above are applicable, the Borrower may elect, by notice to the Agent and the Lenders, to continue such Advances in such Committed Currency for Interest Periods of not longer than one month, which Advances shall thereafter bear interest at a rate per annum equal to the Applicable Margin plus, for each Lender, the cost to such Lender (expressed as a rate per annum) of funding its Eurocurrency Rate Advances by whatever means it reasonably determines to be appropriate. Each Lender shall certify its cost of funds for each Interest Period to the Agent and the Borrower as soon as practicable (but in any event not later than ten Business Days after the first day of such Interest Period).



(c) If the Borrower shall fail to select the duration of any Interest Period for any Eurocurrency Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Agent will forthwith so notify the Borrower and the Lenders and such Advances will automatically, on the last day of the then existing Interest Period therefor, (i) if such Eurocurrency Rate Advances are denominated in Dollars, Convert into Base Rate Advances and (ii) if such Eurocurrency Rate Advances are denominated in a Committed Currency, be exchanged for an Equivalent amount of Dollars and Convert into Base Rate Advances.

(d) On the date on which the aggregate unpaid principal amount of Eurocurrency Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than the Revolving Credit Borrowing Minimum, such Advances shall automatically Convert into Base Rate Advances.

(e) Upon the occurrence and during the continuance of any Event of Default under Section 6.01(a), (i) each Eurocurrency Rate Advance will automatically, on the last day of the then existing Interest Period therefor, (A) if such Eurocurrency Rate Advances are denominated in Dollars, be Converted into Base Rate Advances and (B) if such Eurocurrency Rate Advances are denominated in any Committed Currency, be exchanged for an Equivalent amount of Dollars and be Converted into Base Rate Advances and (ii) the obligation of the Lenders to make, or to Convert Advances into, Eurocurrency Rate Advances shall be suspended; PROVIDED that Borrower may elect, by notice to the Agent and the Lenders within one Business Day of such Event of Default, to continue such Advances in such Committed Currency, whereupon the Agent may require that each Interest Period relating to such Eurocurrency Rate Advances shall bear interest at the Overnight Eurocurrency Rate for a period of three Business Days and thereafter, each such Interest Period shall have a duration of not longer than one month. "OVERNIGHT EURO CURRENCY RATE" means the rate per annum applicable to an overnight period beginning on one Business Day and ending on the next Business Day equal to the sum of 1%, the Applicable Interest Rate Margin and the average, rounded upward to the nearest whole multiple of 1/16 of 1%, if such average is not such a multiple, of the respective rates per annum quoted by each Reference Bank to the Agent on request as the rate at which it is offering overnight deposits in the relevant currency in amounts comparable to such Reference Bank's Eurocurrency Rate Advances.

(f) If Telerate Markets Page 3750 is unavailable and fewer than two Reference Banks furnish timely information to the Agent for determining the Eurocurrency Rate or LIBO Rate for any Eurocurrency Rate Advances or LIBO Rate Advances, as the case may be,

(i) the Agent shall forthwith notify the Borrower and the Lenders that the interest rate cannot be determined for such Eurocurrency Rate Advances or LIBO Rate Advances, as the case may be,

(ii) with respect to Eurocurrency Rate Advances, each such Advance will automatically, on the last day of the then existing Interest Period therefor, (A) if such Eurocurrency Rate Advance is denominated in Dollars, Convert into a Base Rate Advance and (B) if such Eurocurrency Rate Advance is denominated in any Committed Currency, be prepaid by the Borrower or be automatically exchanged for an Equivalent amount of Dollars and be Converted into a Base Rate Advance (or if such Advance is then a Base Rate Advance, will continue as a Base Rate Advance), and

(iii) the obligation of the Lenders to make Eurocurrency Rate Advances or LIBO Rate Advances or to Convert Revolving Credit Advances into Eurocurrency Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 2.10. OPTIONAL CONVERSION OF TRANCHE A ADVANCES. The Borrower may on any Business Day, upon notice given to the Agent not later than 12:00 noon (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.09 and 2.13, Convert all Tranche A Advances of one Type comprising the same Borrowing into Tranche A Advances of the other Type; PROVIDED, HOWEVER, that any Conversion of Eurocurrency Rate Advances into Base Rate Advances shall be made only on the last day of an Interest Period for such Eurocurrency Rate Advances, any Conversion of Base Rate Advances into Eurocurrency Rate Advances shall be in an amount not less than the minimum amount specified in

Section 2.02(b) and no Conversion of any Tranche A Advances shall result in more separate Revolving Credit Borrowings than permitted under Section 2.02(b). Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Tranche A Advances to be Converted, and (iii) if such Conversion is into Eurocurrency Rate Advances, the duration of the initial Interest Period for each such Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

SECTION 2.11. PREPAYMENTS OF REVOLVING CREDIT ADVANCES. (a) OPTIONAL. The Borrower may, upon notice at least three Business Days' prior to the date of such prepayment, in the case of Eurocurrency Rate Advances, and not later than 12:00 noon (New York City time) on the date of such prepayment, in the case of Base Rate Advances, to the Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding principal amount of the Revolving Credit Advances comprising part of the same Revolving Credit Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; PROVIDED, HOWEVER, that (x) each partial prepayment shall be in an aggregate principal amount of not less than the Revolving Credit Borrowing Minimum or a Revolving Credit Borrowing Multiple in excess thereof and (y) in the event of any such prepayment of a Eurocurrency Rate Advance, the Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 8.04(c).

(b) MANDATORY. (i) If, on any date, the Agent notifies the Borrower that, on any interest payment date, the Equivalent in Dollars (determined on the third Business Day prior to such interest payment date) of the aggregate principal amount of all Tranche B Advances then outstanding exceeds 105% of the aggregate Tranche B Commitments on such date, the Borrower shall, as soon as practicable and in any event within two Business Days after receipt of such notice, subject to the proviso to this sentence set forth below, prepay the outstanding principal amount of any Tranche B Advances owing by the Borrower in an aggregate amount sufficient to reduce such amount to an amount not to exceed 100% of the aggregate Tranche B Commitments on such date together with any interest accrued to the date of such prepayment on the aggregate principal amount of Tranche B Advances prepaid; PROVIDED that if the date of such required prepayment is not the last day of an Interest Period for a Tranche B Advance, such required prepayment shall be deferred until the last day of the Interest Period of the outstanding Tranche B Advances. The Agent shall give prompt notice of any prepayment required under this Section 2.11(b) to the Borrower and the Lenders, and shall provide prompt notice to the Borrower of any such notice of required prepayment received by it from any Lender.

(ii) Each prepayment made pursuant to this Section 2.11(b) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Eurocurrency Rate Advance or a LIBO Rate Advance on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to Section 8.04(c). The Agent shall give prompt notice of any prepayment required under this Section 2.11(b) to the Borrower and the Lenders.

SECTION 2.12. INCREASED COSTS. (a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation after the date hereof or (ii) the compliance with any guideline or request from any central bank or other governmental authority made after the date hereof including, without limitation, any agency of the European Union or similar monetary or multinational authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Advances or LIBO Rate Advances or of agreeing to issue or of issuing or maintaining or participating in Letters of Credit (excluding for purposes of this Section 2.12 any such increased costs resulting from (i) Taxes or Other Taxes (as to which Section 2.15 shall govern) and (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate in reasonable detail as to the amount of such increased cost, submitted to the Borrower and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law) effected after the date hereof affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of this type, then, upon demand by such Lender (with a copy of such demand to the Agent), the Borrower shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder. A certificate in reasonable detail as to such amounts submitted to the Borrower and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; PROVIDED that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than six months prior to the date that such Lender notifies the Borrower of the change giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; PROVIDED FURTHER that, if the change giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.13. ILLEGALITY. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender or its Eurocurrency Lending Office to perform its obligations hereunder to make Eurocurrency Rate Advances in Dollars or any Committed Currency or LIBO Rate Advances in Dollars or to fund or maintain Eurocurrency Rate Advances in Dollars or any Committed Currency or LIBO Rate Advances in Dollars hereunder, (a) each Eurocurrency Rate Advance or LIBO Rate Advance, as the case may be, will automatically, upon such demand, (i) if such Eurocurrency Rate Advance or LIBO Rate Advance is denominated in Dollars, be Converted into a Base Rate Advance or an Advance that bears interest at the rate set forth in Section 2.08(a)(i), as the case may be, and (ii) if such Eurocurrency Rate Advance is denominated in any Committed Currency, be exchanged into an Equivalent amount of Dollars and be Converted into a Base Rate Advance and (b) the obligation of the Lenders to make Eurocurrency Rate Advances or LIBO Rate Advances or to Convert Revolving Credit Advances into Eurocurrency Rate Advances shall be suspended until the Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

SECTION 2.14. PAYMENTS AND COMPUTATIONS. (a) The Borrower shall make each payment hereunder (except with respect to principal of, interest on, and other amounts relating to, Advances denominated in a Committed Currency), irrespective of any right of counterclaim or set-off, not later than 12:00 noon (New York City time) on the day when due in Dollars to the Agent at the applicable Agent's Account in same day funds. The Borrower shall make each payment hereunder with respect to principal of, interest on, and other amounts relating to, Advances denominated in a Committed Currency, irrespective of any right of counterclaim or set-off, not later than 12:00 noon (at the Payment Office for such Committed Currency) on the day when due in such Committed Currency to the Agent, by deposit of such funds to the applicable Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest or facility fees ratably (other than amounts payable pursuant to Section 2.03, 2.12, 2.15 or 8.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) The Borrower hereby authorizes each Lender, if and to the extent payment owed to such Lender is not made when due hereunder or under the Note held by such Lender, to charge from time to time against any or all of the Borrower's accounts with such Lender any amount so due.

(c) All computations of interest based on the Base Rate shall be made by the Agent on the basis of a year of 365 or 366 days, as the case may be, all computations of interest based on the Eurocurrency Rate or the Federal Funds Rate and of fees and Letter of Credit commissions shall be made by the Agent on the basis of a year of 360 days and computations in respect of Competitive Bid Advances shall be made by the Agent as specified in the applicable Notice of Competitive Bid Borrowing (or, in each case of Advances denominated in Committed Currencies where market practice differs, in accordance with market practice), in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or facility fee, as the case may be; PROVIDED, HOWEVER, that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Advances or LIBO Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at (i) the Federal Funds Rate in the case of Advances denominated in Dollars or (ii) the cost of funds incurred by the Agent in respect of such amount in the case of Advances denominated in Committed Currencies.

(f) To the extent that the Agent receives funds for application to the amounts owing by any Loan Party under or in respect of this Agreement or any other Loan Document in currencies other than the currency or currencies required to enable the Agent to distribute funds to the Lenders in accordance with the terms of this Section 2.14, the Agent shall be entitled to convert or exchange such funds into Dollars or into a Committed Currency or from Dollars to a Committed Currency or from a Committed Currency to Dollars, as the case may be, to the extent necessary to enable the Agent to distribute such funds in accordance with the terms of this Section 2.14; PROVIDED that the Borrower and each of the Lenders hereby agree that the Agent shall not be liable or responsible for any loss, cost or expense suffered by the Borrower or such Lender as a result of any conversion or exchange of currencies affected pursuant to this Section 2.14(f) or as a result of the failure of the Agent to effect any such conversion or exchange; and PROVIDED FURTHER that the Borrower agrees to indemnify the Agent and each Lender, and hold the Agent and each Lender harmless, for any and all losses, costs and expenses incurred by the Agent or any Lender for any conversion or exchange of currencies (or the failure to convert or exchange any currencies) in accordance with this Section 2.14(f).

SECTION 2.15. TAXES. (a) Any and all payments by the Borrower to or for the account of any Lender or the Agent hereunder or under the Notes or any other documents to be delivered hereunder shall be made, in accordance with Section 2.14 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, EXCLUDING, in the case of each Lender, the Sub-Agent and the Agent, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under the laws of which such Lender, the Sub-Agent or the Agent (as the case may be) is organized or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and



liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "TAXES"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any Note or any other documents to be delivered hereunder to any Lender, the Sub-Agent or the Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) such Lender, the Sub-Agent or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or under the Notes any other documents to be delivered hereunder or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement, any other Loan Document or any other documents to be delivered hereunder or thereunder (hereinafter referred to as "OTHER TAXES").

(c) The Borrower shall indemnify each Lender and the Agent for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.15) imposed on or paid by such Lender or the Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within 30 days from the date such Lender or the Agent (as the case may be) makes written demand therefor by delivery of an invoice in reasonable detail evidencing the amounts owed.

(d) Within 30 days after the date of any payment of Taxes, the Borrower shall furnish to the Agent, at its address referred to in Section 8.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of the Borrower through an account or branch outside the United States or by or on behalf of the Borrower by a payor that is not a United States person, if the Borrower determines that no Taxes are payable in respect thereof, the Borrower shall furnish, or shall cause such payor to furnish, to the Agent, at such address, an opinion of counsel acceptable to the Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "UNITED STATES" and "UNITED STATES PERSON" shall have the meanings specified in Section 7701 of the Internal Revenue Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement in the case of each Initial Lender and on the date of the Assumption Agreement or the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each other Lender, and from time to time thereafter as reasonably requested in writing by the Borrower (but only so long as such Lender remains lawfully able to do so), shall provide each of the Agent and the Borrower with two original Internal Revenue Service forms W-8BEN or W-8ECI, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or the Notes. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; PROVIDED, HOWEVER, that, if at the date of the Assignment and Acceptance pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the date hereof by Internal Revenue Service form W-8BEN or W-8ECI, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Borrower and shall not be obligated to include in such form or document such confidential information.



(f) For any period with respect to which a Lender has failed to provide the Borrower with the appropriate form, certificate or other document described in Section 2.15(e) (OTHER THAN if such failure is due to a change in law, or in the interpretation or application thereof, occurring subsequent to the date on which a form, certificate or other document originally was required to be provided, or if such form, certificate or other document otherwise is not required under subsection (e) above), such Lender shall not be entitled to indemnification under Section 2.15(a) or (c) with respect to Taxes imposed by the United States by reason of such failure; PROVIDED, HOWEVER, that should a Lender become subject to Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Borrower shall take such steps as the Lender shall reasonably request to assist the Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.15 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Eurocurrency Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.16. SHARING OF PAYMENTS, ETC. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Revolving Credit Advances owing to it (other than pursuant to Section 2.12, 2.15 or 8.04(c)) in excess of its ratable share of payments on account of the Revolving Credit Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Revolving Credit Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; PROVIDED, HOWEVER, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.16 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

SECTION 2.17. EVIDENCE OF DEBT. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Revolving Credit Advance owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Revolving Credit Advances. The Borrower agrees that upon notice by any Lender to the Borrower (with a copy of such notice to the Agent) to the effect that a Revolving Credit Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Revolving Credit Advances owing to, or to be made by, such Lender, the Borrower shall promptly execute and deliver to such Lender a Revolving Credit Note payable to the order of such Lender in a principal amount up to the Tranche A Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 8.07(d) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Advances comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be PRIMA FACIE evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; PROVIDED, HOWEVER, that the failure of the Agent or such Lender to make an entry, or any finding that



an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement.

SECTION 2.18. USE OF PROCEEDS. The proceeds of the Advances and issuances of Letters of Credit shall be available (and the Borrower agrees that it shall use such proceeds) solely for general corporate purposes of the Borrower and its Subsidiaries.

### ARTICLE III

#### CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SECTIONS 2.01 AND 2.03. Sections 2.01 and 2.03 of this Agreement shall become effective on and as of the first date (the "EFFECTIVE DATE") on which the following conditions precedent have been satisfied:

(a) There shall have occurred no Material Adverse Change since December 30, 2001.

(b) There shall exist no action, suit, investigation, litigation or proceeding affecting the Borrower or any of its Subsidiaries pending or threatened before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect other than the matters described on Schedule 3.01(b) hereto (the "DISCLOSED LITIGATION") or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated hereby, and there shall have been no adverse change in the status, or financial effect on the Borrower or any of its Subsidiaries, of the Disclosed Litigation from that described on Schedule 3.01(b) hereto.

(c) Nothing shall have come to the attention of the Lenders during the course of their due diligence investigation to lead them to believe that the Information Memorandum and all other Confidential Information provided to the Lenders prior to the date hereof was or has become misleading, incorrect or incomplete in any material respect; without limiting the generality of the foregoing, the Lenders shall have been given such access to the management, records, books of account, contracts and properties of the Borrower and its Subsidiaries as they shall have requested.

(d) All governmental and third party consents and approvals necessary in connection with the transactions contemplated hereby shall have been obtained (without the imposition of any conditions that are not acceptable to the Lenders) and shall remain in effect, and no law or regulation shall be applicable in the reasonable judgment of the Lenders that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated hereby.

(e) The Borrower shall have notified the Agent in writing as to the proposed Effective Date.

(f) The Borrower shall have paid all accrued fees and expenses of the Agent and the Lenders (including the accrued reasonable fees and expenses of counsel to the Agent).

(g) On the Effective Date, the following statements shall be true and the Agent shall have received for the account of each Lender a certificate signed by a duly authorized officer of the Borrower, dated the Effective Date, stating that:

(i) The representations and warranties contained in Section 4.01 are correct on and as of the Effective Date, and

(ii) No event has occurred and is continuing that constitutes a Default.

(h) The Agent shall have received on or before the Effective Date the following, each dated such day, in form and substance satisfactory to the Agent and (except for the Revolving Credit Notes) in sufficient copies for each Lender:

(i) The Revolving Credit Notes to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.17.

(ii) a guaranty in substantially the form of Exhibit D hereto (together with each other guaranty or guaranty supplement delivered pursuant to Section 5.01(j), in each case as amended, the "GUARANTY"), duly executed by each Guarantor.

(iii) Certified copies of the resolutions of the Board of Directors of each Loan Party approving each Loan Document to which it is or is to be a party, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to each Loan Document to which it is or is to be a party.

(iv) A certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder.

(v) A favorable opinion Brian Dan, Associate General Counsel of the Borrower and a favorable opinion of of McDermott, Will & Emery, counsel for the Loan Parties, substantially in the form of Exhibits E-1 and E-2 hereto, respectively, and as to such other matters as any Lender through the Agent may reasonably request.

(vi) A favorable opinion of Shearman & Sterling, counsel for the Agent, in form and substance satisfactory to the Agent.

(i) The Borrower shall have terminated the commitments, and paid in full all Debt, interest, fees and other amounts outstanding, under each of the 364-Day Credit Agreement dated as May 10, 2001 and the Revolving Credit and Line of Credit Agreement date as of February 20, 1998, each as amended, among the Borrower, the lenders parties thereto and SunTrust Bank, Central Florida, National Association, as agent, and each of the Lenders that is a party to each such credit facility hereby waives, upon execution of this Agreement, the three Business Days' notice required by Section 2.3 of each such Credit Agreement relating to the termination of commitments thereunder.

(j) The Borrower shall have terminated the commitments, and arranged, contemporaneously with the initial Borrowing under this Agreement, to have paid in full all Debt, interest, fees and other amounts outstanding, under each of the 1) Term Loan Agreement between Office Depot Japan Ltd. as borrower and The Industrial Bank of Japan, Ltd. as Lender, 2) Term Loan Agreement between Office Depot Japan Ltd. as borrower and The Fuji Bank Ltd. as lender, 3) Term Loan between Office Depot Japan Ltd. as borrower and Union Bank of California N.A., Tokyo Branch as lender, and 4) Revolving Loan Agreement among Office Depot Japan Ltd. as borrower and the lenders named herein and Union Bank of California N.A., Tokyo Branch, each dated July 1, 1999 and each as amended.

SECTION 3.02. CONDITIONS PRECEDENT TO EACH REVOLVING CREDIT BORROWING AND LETTER OF CREDIT Issuance. The obligation of each Lender to make a Revolving Credit Advance on the occasion of each Revolving Credit Borrowing and the obligation of each Issuing Bank to issue a Letter of Credit shall be subject to the conditions precedent that the Effective Date shall have occurred and on the date of such Revolving Credit Borrowing or issuance (a) the following statements shall be true (and each of the giving of the applicable Notice of Revolving Credit Borrowing or Notice of Issuance and the acceptance by the Borrower of the proceeds of such Revolving Credit Borrowing or Letter of Credit shall constitute a representation and warranty by the Borrower that on the date of such Borrowing or such issuance such statements are true):

(i) the representations and warranties contained in each Loan Document are correct on and as of such date, before and after giving effect to such Revolving Credit Borrowing or such issuance and to the application of the proceeds therefrom, as though made on and as of such date, and

(ii) no event has occurred and is continuing, or would result from such Revolving Credit Borrowing or such issuance or from the application of the proceeds therefrom, that constitutes a Default;

and (b) the Agent shall have received such other approvals, opinions or documents as any Lender through the Agent may reasonably request.

SECTION 3.03. CONDITIONS PRECEDENT TO EACH COMPETITIVE BID BORROWING. The obligation of each Lender that is to make a Competitive Bid Advance on the occasion of a Competitive Bid Borrowing to make such Competitive Bid Advance as part of such Competitive Bid Borrowing is subject to the conditions precedent that (i) the Agent shall have received the written confirmatory Notice of Competitive Bid Borrowing with respect thereto, (ii) on or before the date of such Competitive Bid Borrowing, but prior to such Competitive Bid Borrowing, the Agent shall have received a Competitive Bid Note payable to the order of such Lender for each of the one or more Competitive Bid Advances to be made by such Lender as part of such Competitive Bid Borrowing, in a principal amount equal to the principal amount of the Competitive Bid Advance to be evidenced thereby and otherwise on such terms as were agreed to for such Competitive Bid Advance in accordance with Section 2.03, and (iii) on the date of such Competitive Bid Borrowing the following statements shall be true (and each of the giving of the applicable Notice of Competitive Bid Borrowing and the acceptance by the Borrower of the proceeds of such Competitive Bid Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Competitive Bid Borrowing such statements are true):

(a) the representations and warranties contained in each Loan Document are correct on and as of the date of such Competitive Bid Borrowing, before and after giving effect to such Competitive Bid Borrowing and to the application of the proceeds therefrom, as though made on and as of such date, and

(b) no event has occurred and is continuing, or would result from such Competitive Bid Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

SECTION 3.04. DETERMINATIONS UNDER SECTION 3.01. For purposes of determining compliance with the conditions specified in Section 3.01, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Borrower, by notice to the Lenders, designates as the proposed Effective Date, specifying its objection thereto. The Agent shall promptly notify the Lenders of the occurrence of the Effective Date.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

SECTION 4.01. REPRESENTATIONS AND WARRANTIES OF THE BORROWER. The Borrower represents and warrants as follows:

(a) Each Loan Party and their Material Subsidiaries (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it own or leases property or in which the conduct of its business requires it to so qualify or be licensed, except where the failure to be so qualified would not have a Material Adverse Effect and (iii) has all requisite corporate power and authority (including, without limitation, all governmental licenses, permits and other approvals) to own or lease and operate its properties and to carry on its business as now conducted as and proposed to be conducted.

(b) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be a party, and the consummation of the transactions contemplated hereby and thereby, are within such Loan Party's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (i) such Loan Party's charter or by-laws or (ii) law or any contractual restriction binding on or affecting any Loan Party, any of its Subsidiaries or any of its properties.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery and performance by any Loan Party of the Loan Documents to which it is or is to be a party.

(d) This Agreement has been, and each of the other Loan Documents when delivered hereunder will have been, duly executed and delivered by each Loan Party party thereto. This Agreement is, and each of the other Loan Documents when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and subject to general principles of equity.

(e) The Consolidated balance sheet of the Borrower and its Subsidiaries as at December 30, 2001, and the related Consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, accompanied by an opinion of Deloitte & Touche LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present the Consolidated financial condition of the Borrower and its Subsidiaries as at such date and the Consolidated results of the operations of the Borrower and its Subsidiaries for the period ended on such date, all in accordance with generally accepted accounting principles consistently applied. Since December 30, 2001, there has been no Material Adverse Change.

(f) There is no pending or threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect (other than the Disclosed Litigation) or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the transactions contemplated hereby, and there has been no adverse change in the status, or financial effect on the Borrower or any of its Subsidiaries, of the Disclosed Litigation from that described on Schedule 3.01(b) hereto.

(g) Neither the Information Memorandum nor any other information, exhibit or report furnished by or on behalf of any Loan Party to the Agent or and Lender in connection with the negotiation and syndication of the Loan Documents or pursuant to the terms of the Loan Documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein not misleading.

(h) The Borrower and each of its Material Subsidiaries has filed, has caused to be filed or has been included in all tax returns (Federal, state, local and foreign) required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties.

(i) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Advance will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(j) The Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.



(k) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes, and none of such property is subject to any Lien, except as permitted by Section 5.02(a).

(l) Each of the 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 Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(m) All intercompany loans in a principal amount of \$25,000,000 or more by and among the Borrower and its Subsidiaries as of the Effective Date are described on Schedule 4.01(m) hereto.

(n) The Borrower and its Subsidiaries have experienced no strikes, labor disputes, slow downs or work stoppages due to labor disagreements which have had, or would reasonably be expected to have, a Materially Adverse Effect, and, to the best knowledge of the Borrower, there are no such strikes, disputes, slow downs or work stoppages threatened against the Borrower or any of its Subsidiaries.

(o) Each Loan Party is, individually and together with its Subsidiaries, Solvent.

#### ARTICLE V

##### COVENANTS OF THE BORROWER

SECTION 5.01. AFFIRMATIVE COVENANTS. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder or any Letter of Credit shall be outstanding, the Borrower will:

(a) COMPLIANCE WITH LAWS, ETC. Comply, and cause each of its Subsidiaries to comply, in all material respects, with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA and Environmental Laws, except to the extent that any such non-compliance, in the aggregate, would not have a material negative impact on any Loan Party and its Subsidiaries, taken as a whole.

(b) PAYMENT OF TAXES, ETC. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property; PROVIDED, HOWEVER, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors.

(c) MAINTENANCE OF INSURANCE. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates; PROVIDED, HOWEVER, that the Borrower and its Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and to the extent consistent with prudent business practice.

(d) PRESERVATION OF CORPORATE EXISTENCE, ETC. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; PROVIDED, HOWEVER, that (i) the Borrower and its Subsidiaries may consummate any merger or consolidation permitted under Section 5.02(b) and (ii) neither the Borrower nor any of its Subsidiaries shall be required to



preserve any right or franchise if the Board of Directors of the Borrower or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Borrower or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the Borrower, such Subsidiary or the Lenders, PROVIDED, FURTHER, that the foregoing shall not restrict any Person other than a Loan Party to the extent that the failure to so comply would not be reasonably likely to have a Material Adverse Effect.

(e) VISITATION RIGHTS. At any reasonable time and from time to time during normal business hours, permit the Agent or any of the Lenders or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants, PROVIDED that so long as no Default shall have occurred and be continuing, the Agent and each Lender shall visit the Borrower and its Subsidiaries not more than four times in any year.

(f) KEEPING OF BOOKS. Keep, and cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary in accordance with generally accepted accounting principles in effect from time to time.

(g) MAINTENANCE OF PROPERTIES, ETC. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(h) TRANSACTIONS WITH AFFILIATES. Conduct, and cause each of its Subsidiaries to conduct, all transactions otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and reasonable and no less favorable to the Borrower or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

(i) REPORTING REQUIREMENTS. Furnish to the Agent:

(i) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Borrower, the Consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such quarter and Consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to year-end audit adjustments) by the chief financial officer of the Borrower as having been prepared in accordance with generally accepted accounting principles and certificates of the chief financial officer, treasurer or controller of the Borrower as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03, PROVIDED that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary for the determination of compliance with Section 5.03, a statement of reconciliation conforming such financial statements to GAAP;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, a copy of the annual audit report for such year for the Borrower and its Subsidiaries, containing the Consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year and Consolidated statements of income and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case accompanied by an opinion acceptable to the Required Lenders by Deloitte & Touche LLP or other independent public accountants acceptable to the Required Lenders, PROVIDED that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if



necessary for the determination of compliance with Section 5.03, a statement of reconciliation conforming such financial statements to GAAP;

(iii) as soon as possible and in any event within five days after an Executive Officer has notice or knowledge of the occurrence of each Default continuing on the date of such statement, a statement of an Executive Officer of the Borrower setting forth details of such Default and the action that the Borrower has taken and proposes to take with respect thereto;

(iv) promptly after the sending or filing thereof, copies of all reports that the Borrower sends to any of its securityholders, and copies of all reports and registration statements that the Borrower or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(v) promptly after the commencement thereof, notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Borrower or any of its Subsidiaries of the type described in Section 4.01(f); and

(vi) such other information respecting the Borrower or any of its Subsidiaries as any Lender through the Agent may from time to time reasonably request.

(j) COVENANT TO GUARANTEE OBLIGATIONS. The Borrower shall, with respect to any Person that subsequent to the Effective Date, becomes a Subsidiary organized in a jurisdiction within the United States having total assets that accounted for or produced, or would on a pro forma basis have accounted for or produced, more than 10% of Consolidated EBITR of the Borrower during any of the three most recently completed fiscal years of the Borrower, promptly cause such Subsidiary to become a party to the Guaranty pursuant to documentation that is in form and substance satisfactory to the Agent.

(k) OWNERSHIP OF GUARANTORS. Maintain at least its percentage of ownership existing as of the date hereof of all Guarantors, and maintain its ownership percentage in each Person which becomes a Guarantor after the date hereof, as such ownership exists at the time such Person becomes a Guarantor.

SECTION 5.02. NEGATIVE COVENANTS. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder or any Letter of Credit shall be outstanding, the Borrower will not:

(a) LIENS, ETC. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than:

(i) Permitted Liens,

(ii) purchase money Liens upon or in any real property, improvement or equipment acquired or held by the Borrower or any Subsidiary in the ordinary course of business to secure the purchase price of such property, improvement or equipment or to secure Debt incurred solely for the purpose of financing the acquisition of such property, improvement or equipment, or Liens existing on such property, improvement or equipment at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such property) or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, PROVIDED, HOWEVER, that no such Lien shall extend to or cover any properties of any character other than the real property or equipment being acquired, and no such extension, renewal or replacement shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed or replaced, PROVIDED FURTHER that the aggregate principal amount of the indebtedness secured by the Liens referred to in this clause (ii) shall not exceed \$150,000,000 at any time outstanding,



(iii) the Liens existing on the Effective Date and described on Schedule 5.02(a) hereto,

(iv) Liens on property of a Person existing at the time such Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower; PROVIDED that such Liens were not created in contemplation of such merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary,

(v) Liens relating to an accounts receivable securitization program in an amount not to exceed \$300,000,000,

(vi) other Liens securing Debt in an aggregate principal amount not to exceed \$25,000,000 at any time outstanding, and

(vii) the replacement, extension or renewal of any Lien permitted by clause (iii) or (iv) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Debt secured thereby.

(b) MERGERS, ETC. Merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person, or permit any of its Subsidiaries to do so, except that (i) any Subsidiary of the Borrower may merge or consolidate with or into, or dispose of assets to, any other Subsidiary of the Borrower, (ii) any Subsidiary of the Borrower formed in connection with an accounts receivable securitization program solely for the purpose of selling its assets may sell all or substantially all of its assets in connection with such securitization and (iii) any Subsidiary of the Borrower may merge into or dispose of assets to the Borrower so long as the Borrower is the surviving corporation, PROVIDED, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) ACCOUNTING CHANGES. Make or permit, or permit any of its Subsidiaries to make or permit, any change in accounting policies or reporting practices, except as required by generally accepted accounting principles.

(d) CHANGE IN NATURE OF BUSINESS. Make, or permit any of its Subsidiaries to make, any material change in the nature of its business as carried on at the date hereof or related or incidental thereto.

(e) INVESTMENTS IN OTHER PERSONS. Make or hold, or permit any of its Subsidiaries to make or hold, any Investment in any other Person other than:

(i) Investments by the Borrower and its Subsidiaries in the Guarantors;

(ii) Investments existing on the date hereof and listed on Schedule 5.02(e);

(iii) Investments relating to an accounts receivable securitization program in an amount not to exceed \$300,000,000,

(iv) loans and advances to employees in the ordinary course of the business of the Borrower and its Subsidiaries as presently conducted in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding;

(v) Investments in Marketable Securities;

(vi) Investments consisting of Debt payable by any Subsidiary of the Borrower to the Borrower or any of its Subsidiaries;

(vii) other Investments not included in clauses (i) through (vi) above in an aggregate amount invested not to exceed \$250,000,000, and

(viii) accretions in equity value of any Investment otherwise permitted under this Section 5.02(e).

(f) NEGATIVE PLEDGE. Enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any agreement prohibiting or conditioning the creation or assumption of any Lien upon any of its property or assets except (i) in favor of the Lenders or (ii) in connection with (A) any purchase money Debt permitted by Section 5.02(a)(ii) solely to the extent that the agreement or instrument governing such Debt prohibits a Lien on the property acquired with the proceeds of such Debt or (B) any Debt outstanding on the date any Subsidiary of the Borrower becomes such a Subsidiary (so long as such agreement was not entered into solely in contemplation of such Subsidiary becoming a Subsidiary of the Borrower).

(g) SUBSIDIARY DEBT. Permit any of its Subsidiaries to create or suffer to exist, any Debt other than:

(i) Debt owed to the Borrower or to a wholly owned Subsidiary of the Borrower,

(ii) Debt existing on the Effective Date and described on Schedule 5.02(g) hereto (the "EXISTING DEBT"), and any Debt extending the maturity of, or refunding or refinancing, in whole or in part, the Existing Debt, PROVIDED that the principal amount of such Existing Debt shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and the direct and contingent obligors therefor shall not be changed, as a result of or in connection with such extension, refunding or refinancing,

(iii) Debt secured by Liens permitted by Section 5.02(a)(ii), (iv) or (v),

(iv) Debt incurred in the ordinary course of business aggregating for all of the Borrower's Subsidiaries not more than \$100,000,000 at any one time outstanding, and

(v) indorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

(h) ACTIONS UNDER CERTAIN DOCUMENTS. Modify, amend, cancel or rescind any agreements or documents evidencing or governing Subordinated Debt.

SECTION 5.03. FINANCIAL COVENANTS. So long as any Advance shall remain unpaid or any Lender shall have any Commitment hereunder or any Letter of Credit shall be outstanding, the Borrower will:

(a) FIXED CHARGE COVERAGE RATIO. Maintain a ratio of Consolidated EBITR of the Borrower and its Subsidiaries to the sum of (i) net interest payable on, and amortization of debt discount in respect of, all Debt during such period PLUS (ii) rentals payable under leases of real or personal, or mixed, property during such period PLUS (iii) interest and other continuing program fees (excluding initial closing fees) related to an accounts receivable securitization program payable during such period, in each case, by the Borrower and its Subsidiaries of not less than the amount set forth below for each period set forth below:

| Period                         | Ratio     |
|--------------------------------|-----------|
| -----                          | -----     |
| Effective Date until           |           |
| December 31, 2004              | 1.50:1.00 |
| January 1, 2005 and thereafter | 1.70:1.00 |



(b) LEVERAGE RATIO. Maintain a ratio of Consolidated Debt to the sum of Consolidated Debt plus shareholders' equity of not greater than 0.45:1.00.

## ARTICLE VI

### EVENTS OF DEFAULT

SECTION 6.01. EVENTS OF DEFAULT. If any of the following events ("EVENTS OF DEFAULT") shall occur and be continuing:

(a) The Borrower shall fail to pay any principal of any Advance when the same becomes due and payable; or the Borrower shall fail to pay any interest on any Advance or make any other payment of fees or other amounts payable under this Agreement or any Note within three Business Days after the same becomes due and payable; or

(b) Any representation or warranty made by the Borrower herein or by the Borrower (or any of its officers) in connection with this Agreement shall prove to have been incorrect in any material respect when made; or

(c) (i) The Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(d) (as to the existence of any Loan Party), (e), (h) or (i), 5.02 or 5.03, or (ii) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Borrower by the Agent or any Lender; or

(d) The Borrower or any of its Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal or notional amount of at least \$25,000,000 in the aggregate (but excluding Debt outstanding hereunder) of the Borrower or such Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) The Borrower or any of its Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Borrower or any of its Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or

(f) Judgments or orders for the payment of money in excess of \$25,000,000 in the aggregate shall be rendered against the Borrower or any of its Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; PROVIDED, HOWEVER, that any such judgment or order shall not be an Event of Default under this Section 6.01(f) if and for so long as (i) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (ii) such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order; or

(g) the Borrower shall cease at any time to own, directly or indirectly, a majority of the Voting Stock of each Guarantor; or

(h) (i) Any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of the Borrower (or other securities convertible into such Voting Stock) representing 40% or more of the combined voting power of all Voting Stock of the Borrower; or

(i) any provision of any Loan Document after delivery thereof pursuant to Section 3.01 or 5.01(j) shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(j) The Borrower or any of its ERISA Affiliates shall incur, or shall be reasonably likely to incur liability in excess of \$25,000,000 in the aggregate as a result of one or more of the following: (i) the occurrence of any ERISA Event; (ii) the partial or complete withdrawal of the Borrower or any of its ERISA Affiliates from a Multiemployer Plan; or (iii) the reorganization or termination of a Multiemployer Plan;

then, and in any such event, the Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the obligation of each Lender to make Advances (other than Tranche A Advances by an Issuing Bank or a Lender pursuant to Section 2.02(b)) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; PROVIDED, HOWEVER, that in the event of an actual or deemed entry of an order for relief with respect to the Borrower under the Federal Bankruptcy Code, (A) the obligation of each Lender to make Advances (other than Tranche A Advances by an Issuing Bank or a Lender pursuant to Section 2.02(b)) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

SECTION 6.02. ACTIONS IN RESPECT OF THE LETTERS OF CREDIT UPON DEFAULT. If any Event of Default shall have occurred and be continuing, the Agent may with the consent, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, (a) pay to the Agent on behalf of the Lender Parties in same day funds at the Agent's office designated in such demand, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Required Lenders. If at any time the Agent determines that any funds held in the L/C Cash Collateral Account are subject to any right or claim of any Person other than the Agent and the Lender Parties or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Collateral Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Collateral



Account that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law.

## ARTICLE VII

### THE AGENT

SECTION 7.01. AUTHORIZATION AND ACTION. Each Lender (in its capacities as a Lender and Issuing Bank (as applicable)) hereby appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement (including, without limitation, enforcement or collection of the Notes), the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions shall be binding upon all Lenders and all holders of Notes; PROVIDED, HOWEVER, that the Agent shall not be required to take any action that exposes the Agent to personal liability or that is contrary to this Agreement or applicable law. The Agent shall be fully justified in failing or refusing to take any action under this Agreement and the other Loan Documents unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action except for its own gross negligence or willful misconduct. The Agent agrees to give to each Lender prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement, provided that the Agent shall have no liability for the failure or delay in giving such notices. The Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or attorneys-in-fact selected by the Agent in the absence of gross negligence or willful misconduct.

SECTION 7.02. AGENT'S RELIANCE, ETC. Neither the Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Agent: (i) may treat the Lender that made any Advance as the holder of the Debt resulting therefrom until the Agent receives and accepts an Assignment and Acceptance entered into by such Lender, as assignor, and an Eligible Assignee, as assignee, as provided in Section 8.07; (ii) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (iii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement; (iv) shall not have any duty to ascertain or to inquire as to the performance, observance or satisfaction of any of the terms, covenants or conditions of this Agreement on the part of the Borrower or the existence at any time of any Default or to inspect the property (including the books and records) of the Borrower; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; and (vi) shall incur no liability under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopier, telegram or telex) believed by it to be genuine and signed or sent by the proper party or parties. The Agent shall be entitled to rely, and shall be fully protected in relying in good faith, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including without limitation counsel to the Borrower), independent accountants and other experts selected by the Agent.

SECTION 7.03. WACHOVIA AND AFFILIATES. With respect to its Commitment, the Advances made by it and the Note issued to it, Wachovia shall have the same rights and powers under this Agreement as any other



Lender and may exercise the same as though it were not the Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include Wachovia in its individual capacity. Wachovia and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, the Borrower, any of its Subsidiaries and any Person who may do business with or own securities of the Borrower or any such Subsidiary, all as if Wachovia were not the Agent and without any duty to account therefor to the Lenders. The Agent shall have no duty to disclose information obtained or received by it or any of its Affiliates relating to the Borrower or its Subsidiaries to the extent such information was obtained or received in any capacity other than as Agent.

SECTION 7.04. LENDER CREDIT DECISION. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on the financial statements referred to in Section 4.01 and such other 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 Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 7.05. INDEMNIFICATION. (a) The Lenders agree to indemnify the Agent (to the extent not reimbursed by the Borrower), ratably according to the respective principal amounts of the Revolving Credit Advances then owed to each of them (or if no Revolving Credit Advances are at the time outstanding, ratably according to the respective amounts of their Tranche A Commitments), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement (collectively, the "INDEMNIFIED COSTS"), PROVIDED that no Lender shall be liable for any portion of the Indemnified Costs resulting from the Agent's gross negligence or willful misconduct. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not reimbursed for such expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 7.05 applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party.

(b) Each Lender severally agrees to indemnify the Issuing Banks (to the extent not promptly reimbursed by the Borrower) from and against such Lender's ratable share (determined as provided below) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any such Issuing Bank in any way relating to or arising out of this Agreement or any action taken or omitted by such Issuing Bank hereunder or in connection herewith; PROVIDED, HOWEVER, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Issuing Bank's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse any such Issuing Bank promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under Section 8.04, to the extent that such Issuing Bank is not promptly reimbursed for such costs and expenses by the Borrower.

(c) For purposes of this Section 7.05, the Lenders' respective ratable shares of any amount shall be determined, at any time, according to the sum of (i) the aggregate principal amount of the Advances (other than Competitive Bid Advances) outstanding at such time and owing to the respective Lenders, (ii) their respective Pro Rata Shares of the aggregate Available Amount of all Letters of Credit outstanding at such time and (iii) their respective Unused Commitments at such time; PROVIDED that the aggregate principal amount of Tranche A Advances owing to any Issuing Bank as a result of drawings under Letters of Credit shall be considered to be owed to the Lenders ratably in accordance with their respective Tranche A Commitments. The failure of any Lender to reimburse the Agent or any such Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by

the Lenders to such Agent or such Issuing Bank, as the case may be, as provided

herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent or Issuing Bank, as the case may be, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Agent or any such Issuing Bank, as the case may be, for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 7.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

SECTION 7.06. SUCCESSOR AGENT. The Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a commercial bank organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$500,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article VII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

SECTION 7.07. SUB-AGENT. The Sub-Agent has been designated under this Agreement to carry out duties of the Agent. The Sub-Agent shall be subject to each of the obligations in this Agreement to be performed by the Sub-Agent, and each of the Borrower and the Lenders agrees that the Sub-Agent shall be entitled to exercise each of the rights and shall be entitled to each of the benefits of the Agent under this Agreement as relate to the performance of its obligations hereunder.

SECTION 7.08. OTHER AGENTS. Each Lender hereby acknowledges that neither the documentation agent nor any other Lender designated as any "Agent" on the signature pages hereof has any liability hereunder other than in its capacity as a Lender.

#### ARTICLE VIII

#### MISCELLANEOUS

SECTION 8.01. AMENDMENTS, ETC. No amendment or waiver of any provision of this Agreement or the Revolving Credit Notes, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; PROVIDED, HOWEVER, that no amendment, waiver or consent shall, unless in writing and signed by the Required Lenders and each of the Lenders affected thereby, do any of the following: (a) waive any of the conditions specified in Section 3.01, (b) increase the Commitments of the Lenders, (c) reduce the principal of, or interest on, the Revolving Credit Advances or any fees or other amounts payable hereunder, (d) postpone any date fixed for any payment of principal of, or interest on, the Revolving Credit Advances or any fees or other amounts payable hereunder, (e) change the percentage of the Tranche A Commitments, the aggregate Available Amount of outstanding Letters of Credit or of the aggregate unpaid principal amount of the Revolving Credit Advances that shall be required for the Lenders or any of them to take any action hereunder, (f) reduce or limit the obligations of any Guarantor under Section 1 of the Guaranty or release such Guarantor or otherwise limit such Guarantor's liability with respect to the obligations owing to the Agent and the Lenders (other than to the extent permitted under the Guaranty) or (g) amend this Section 8.01; and PROVIDED FURTHER that no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any Note; and PROVIDED FURTHER that no amendment, waiver or consent shall, unless in writing and signed by the Issuing Banks in addition to the Lenders required above to take such action, affect the rights or obligation of the Issuing Banks under this Agreement.

SECTION 8.02. NOTICES, ETC. All notices and other communications provided for hereunder shall be in writing (including telecopier, telegraphic or telex communication) and mailed, telecopied, telegraphed, telexed or delivered, if to the Borrower, at its address at 22 Old Germantown Road, Delray Beach, Florida 33445, Attention: Carolyn Clarke; if to any Initial Lender, at its Domestic Lending Office specified opposite its name on Schedule I hereto; if to any other Lender, at its Domestic Lending Office specified in the Assignment and Acceptance pursuant to which it became a Lender; and if to the Agent, at its address at 201 South College Street, Charlotte, NC 28288, Attention: Syndication Agency Services; or, as to the Borrower or the Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Agent. All such notices and communications shall, when mailed, telecopied, telegraphed or telexed, be effective when deposited in the mails, telecopied, delivered to the telegraph company or confirmed by telex answerback, respectively, except that notices and communications to the Agent pursuant to Article II, III or VII shall not be effective until received by the Agent. Delivery by telecopier of an executed counterpart of any amendment or waiver of any provision of this Agreement or the Notes or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof.

SECTION 8.03. NO WAIVER; REMEDIES. No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8.04. COSTS AND EXPENSES. (a) The Borrower agrees to pay on demand all reasonable out-of-pocket costs and expenses of the Agent in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses and (B) the reasonable fees and expenses of counsel for the Agent with respect thereto and with respect to advising the Agent as to its rights and responsibilities under this Agreement. The Borrower further agrees to pay on demand all costs and expenses of the Agent and the Lenders, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, reasonable fees and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this Section 8.04(a).

(b) The Borrower agrees to indemnify and hold harmless the Agent and each Lender and each of their Affiliates and their officers, directors, employees, agents and advisors (each, an "INDEMNIFIED PARTY") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances or (ii) the actual or alleged presence of Hazardous Materials on any property of the Borrower or any of its Subsidiaries or any Environmental Action relating in any way to the Borrower or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense resulted from such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Borrower also agrees not to assert any claim for special, indirect, consequential or punitive damages against the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Advances.

(c) If any payment of principal of, or Conversion of, any Eurocurrency Rate Advance or LIBO Rate Advance is made by the Borrower to or for

the account of a Lender (i) other than on the last day of the

Interest Period for such Advance, as a result of a payment or Conversion pursuant to Section 2.09, 2.11 or 2.13, acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 8.07(a) or (ii) as a result of a payment or Conversion pursuant to Section 2.09, 2.11 or 2.13, the Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance. If the amount of the Committed Currency purchased by any Lender in the case of a Conversion or exchange of Advances in the case of Section 2.09 or 2.13 exceeds the sum required to satisfy such Lender's liability in respect of such Advances, such Lender agrees to remit to the Company such excess.

(d) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in Sections 2.12, 2.15 and 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

SECTION 8.05. RIGHT OF SET-OFF. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Notes due and payable pursuant to the provisions of Section 6.01, 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 indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement and the Note held by such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application, PROVIDED that the failure to give such notice shall not affect the validity of such set-off and application. The amount of any set-off under this Section 8.05 shall be denominated in Dollars, and any amounts owing to the applicable Lender in any Committed Currency shall be in an amount equal to the amount of Dollars that such Lender shall determine by reference to the spot exchange rate determined by such Lender to be available (or such other reasonable method of determining a rate of exchange as the Lender may deem applicable), such determination of such amount of Dollars to be conclusive and binding in the absence of manifest error. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender and its Affiliates may have.

SECTION 8.06. BINDING EFFECT. This Agreement shall become effective (other than Sections 2.01 and 2.03, which shall only become effective upon satisfaction of the conditions precedent set forth in Section 3.01) when it shall have been executed by the Borrower and the Agent and when the Agent shall have been notified by each Initial Lender that such Initial Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 8.07. ASSIGNMENTS AND PARTICIPATIONS. (a) Each Lender may and, if demanded by the Borrower (following a demand by such Lender pursuant to Section 2.12 or 2.15 or an assertion by such Lender under Section 2.13) upon at least five Business Days' notice to such Lender and the Agent, will assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Revolving Credit Commitment, the Revolving Credit Advances owing to it and the Revolving Credit Note or Notes held by it); PROVIDED, HOWEVER, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under and in respect of on or more of the Tranche A Facility, the Tranche B Facility or the Letter of Credit Facility, (ii) except in the case of an assignment to a Person that, immediately prior to such assignment, was a Lender or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of the Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof unless the



agree, (iii) each such assignment shall be to an Eligible Assignee, (iv) each such assignment made as a result of a demand by the Borrower pursuant to this Section 8.07(a) shall be arranged by the Borrower after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement, (v) no Lender shall be obligated to make any such assignment as a result of a demand by the Borrower pursuant to this Section 8.07(a) unless and until such Lender shall have received one or more payments from either the Borrower or one or more Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the Advances owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement, and (vi) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Revolving Credit Note subject to such assignment and a processing and recordation fee of \$3,500 payable by the parties to each such assignment, PROVIDED, HOWEVER, that in the case of each assignment made as a result of a demand by the Borrower, such recordation fee shall be payable by the Borrower except that no such recordation fee shall be payable in the case of an assignment made at the request of the Borrower to an Eligible Assignee that is an existing Lender, and (vii) any Lender may, without the approval of the Borrower and the Agent, assign all or a portion of its rights to any of its Affiliates. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Section 2.12, 2.15 and 8.04 to the extent any claim thereunder relates to an event arising prior such assignment) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender or as an Issuing Bank, as the case may be.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Revolving Credit Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower.

(d) The Agent shall maintain at its address referred to in

Section 8.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and

addresses of the Lenders and the Commitments of, and principal amount of the Advances owing to, each Lender from time to time (the "REGISTER"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Each Lender may sell participations to one or more banks or other entities (other than the Borrower or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Tranche A Commitment or Tranche B Commitment, the Advances owing to it and any Note or Notes held by it); PROVIDED, HOWEVER, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitments to the Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of this Agreement or any Note, or any consent to any departure by the Borrower therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

(f) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 8.07, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Confidential Information relating to the Borrower received by it from such Lender.

(g) The Issuing Banks may assign to an Eligible Assignee its rights and obligations or any portion of the undrawn Letter of Credit Commitment of such Issuing Bank at any time; PROVIDED, HOWEVER, that (i) the amount of the Letter of Credit Commitment of the assigning Issuing Bank being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, and (ii) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with a processing and recordation fee of \$3,500.

(h) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including, without limitation, the Advances owing to it and any Note or Notes held by it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

SECTION 8.08. CONFIDENTIALITY. Neither the Agent nor any Lender shall disclose any Confidential Information to any other Person without the consent of the Borrower, other than (a) to the Agent's or such Lender's Affiliates and their officers, directors, employees, agents and advisors and, as contemplated by Section 8.07(f), to actual or prospective assignees and participants, that are informed of the confidential nature of the Confidential Information and who agree to be bound by the terms and conditions of this Section 8.08, (b) as required by any law, rule or regulation or judicial process, provided that, to the extent permitted by law, a request is made for confidential treatment of such information, (c) as requested or required by any state, federal or foreign authority or examiner regulating banks or banking and (d) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder.

SECTION 8.09. GOVERNING LAW. This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York.



SECTION 8.10. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 8.11. JUDGMENT. (a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase Dollars with such other currency at the Sub-Agent's principal office in London at 11:00 A.M. (London time) on the Business Day preceding that on which final judgment is given.

(b) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in a Committed Currency into Dollars, the parties agree to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase such Committed Currency with Dollars at the Sub-Agent's principal office in London at 11:00 A.M. (London time) on the Business Day preceding that on which final judgment is given.

(c) The obligation of the Borrower in respect of any sum due from it in any currency (the "PRIMARY CURRENCY") to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to the Borrower such excess.

SECTION 8.12. JURISDICTION, ETC. (a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the Notes, 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 any such New York State court or, to the extent permitted by law, in such federal court. The Borrower hereby agrees that service of process in any such action or proceeding brought in the any such New York State court or in such federal court may be made upon CT Corporation System at its offices at 1633 Broadway, New York, New York 10019 (the "PROCESS AGENT") and the Borrower hereby irrevocably appoints the Process Agent its authorized agent to accept such service of process, and agrees that the failure of the Process Agent to give any notice of any such service shall not impair or affect the validity of such service or of any judgment rendered in any action or proceeding based thereon. The Borrower hereby further irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to the Borrower at its address specified pursuant to Section 8.02. 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 shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or the Notes in the courts of any jurisdiction.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that 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 the Notes in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.



SECTION 8.13. SUBSTITUTION OF CURRENCY. If a change in any Committed Currency occurs pursuant to any applicable law, rule or regulation of any governmental, monetary or multi-national authority, this Agreement (including, without limitation, the definitions of Eurocurrency Rate and LIBO Rate) will be amended to the extent determined by the Agent (acting reasonably and in consultation with the Borrower) to be necessary to reflect the change in currency and to put the Lenders and the Borrower in the same position, so far as possible, that they would have been in if no change in such Committed Currency had occurred.

SECTION 8.14. NO LIABILITY OF THE ISSUING BANKS. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither an Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower proves were caused by (i) such Issuing Bank's willful misconduct or gross negligence in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) such Issuing Bank's willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 8.15. WAIVER OF JURY TRIAL. Each of the Borrower, the Agent, the Sub-Agent and the Lenders hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the Notes or the actions of the Agent or any Lender in the negotiation, administration, performance or enforcement thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

OFFICE DEPOT, INC.

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

WACHOVIA BANK, NATIONAL ASSOCIATION,  
as Agent

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

INITIAL LENDERS

LETTER OF CREDIT COMMITMENT

\$106,469,000

WACHOVIA BANK, NATIONAL ASSOCIATION

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

\$43,531,000

SUNTRUST BANK

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

\$150,000,000 Total of the Letter of Credit Commitments

TRANCHE A COMMITMENT

\$65,000,000

CITIBANK, N.A.

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

\$65,000,000

WACHOVIA BANK, NATIONAL ASSOCIATION

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

\$55,000,000

BNP PARIBAS

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

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

\$55,000,000

FLEET NATIONAL BANK

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

\$50,000,000

FIFTH THIRD BANK

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

\$50,000,000

ROYAL BANK OF SCOTLAND

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

\$50,000,000

UNION BANK OF CALIFORNIA

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

\$50,000,000

WELLS FARGO BANK, N.A.

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

\$40,000,000

BANK ONE, NA

By

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Title:

\$25,000,000

BANK OF AMERICA, N.A.

By

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Title:

\$25,000,000

THE BANK OF NOVA SCOTIA

By

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Title:

\$25,000,000

NATIONAL CITY BANK

By

-----  
Title:

\$25,000,000

SUNTRUST BANK

By

-----  
Title:

\$10,000,000

HIBERNIA BANK

By

-----  
Title:

\$10,000,000

SUMITOMO BANK

By

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Title:

\$600,000,000

Total of the Tranche A Commitments

TRANCHE B COMMITMENT

\$20,000,000

CITIBANK, N.A.

By

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Title:

\$20,000,000

WACHOVIA BANK, NATIONAL ASSOCIATION

By

-----

Title:

\$50,000,000

UNION BANK OF CALIFORNIA

By

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Title:

\$10,000,000

SUMITOMO BANK

By

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Title:

\$100,000,000

Total of the Tranche B Commitmen